

**MINUTES OF THE
ASSEMBLY SELECT COMMITTEE ON ELECTION CONTESTS
(Assemblywoman Chris Giunchigliani - District No. 9)**

**SIXTY-EIGHTH SESSION
January 17, 1995**

The Assembly Select Committee on Election Contests was called to order by Co-Chairman Spitler at 8:13 a.m. on Tuesday, January 17, 1995, in Room 119 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda and Exhibit B is the Guest List. Exhibits shown in parentheses are so noted for purposes of this Assembly transcription, and will not conform to exhibits offered by the Contestant and Contestee. Numbers noted in parentheses indicate coordinates with the recorder and are herein included to aid in easy reference.

COMMITTEE MEMBERS PRESENT:

Mrs. Joan Lambert Co-Chairman
Mr. Larry Spitler, Co-Chairman
Mr. Jack Close, Vice Co-Chairman
Mr. Bernie Anderson, Vice Co-Chairman
Ms. Barbara Buckley
Mr. Lynn Hettrick
Mr. Richard Perkins
Mr. Bob Price
Mr. Brian Sandoval
Ms. Sandra Tiffany

COMMITTEE MEMBERS ABSENT:

None

OTHERS PRESENT:

Kathy England, Counsel for Contestee, Assemblywoman Chris Giunchigliani
Chris Giunchigliani, Contestee for Assembly District 9
Dan Foley, Counsel for Contestant, Kathy Von Tobel
Kathy Von Tobel, Contestant for Assembly District 9
Kathryn Ferguson, Registrar of Voters, Las Vegas
Glen Arnodo, Culinary Union Representative
Danny Thompson, AFL-CIO Union Representative
Dale Erquiaga, Deputy Secretary of State

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STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Iris Bellinger, Secretary
Nykki Kinsley, Secretary

Following roll call, the presiding Co-Chairman, Assemblyman Larry Spitler, made welcoming and introductory remarks outlining the procedure committee members would be asked to follow in the open meeting of the Contest of Elections hearing for Assembly District 9, as provided by Nevada State law. Following, is a verbatim account of those proceedings:

TAPE 1 - SIDE A

Spitler: Upon conclusion of the review of information by this committee, a vote of the Assembly Committee on Credentials will be conducted to determine the recommendation to be made to the full Assembly.

Please allow me to describe to all of you the procedure we will be following to ensure an orderly and thorough review of all pertinent testimony and documentation concerning the contest under review.

First, it is expected that all persons appearing before a committee of the Nevada Legislature are telling nothing but the truth. However, in a matter of such gravity and importance it is appropriate that oral statements before us today which purport to establish matters of fact be made under oath and penalty of perjury. It should be noted that the contest before us today represents only the twelfth occasion in Nevada history that the election of a member of the Assembly has been contested since enactment of the original law in 1873.

We would also ask that the proceedings here today remain orderly and consistent with deliberations of an elected body in a democratic society. Unsolicited comments, outbursts and disturbances from the audience will not be tolerated. Let me inform all of you that the Nevada Constitution, ever since its enactment in 1864, permits either house of the Legislature to impose a penalty against any non-

member who commits an act of disrespect to the house by disorderly or contemptuous behavior in its presence.

Finally, Nevada Revised Statutes 293.410 specifies those grounds upon which an election may be contested. Those include malfeasance of election by election officials, eligibility of a candidate for office, canvassing errors, bribery to procure election and malfunction of a voting device. That law also specifies that an election may be contested on the grounds that illegal votes were cast and counted for the defendant which if taken from him will reduce the number of his legal votes below the number necessary to elect him. The person bringing the contest, not the person against whom the contest is filed, carries the burden of proving that any irregularity shown were of such a nature as to establish the actual result of the election was changed.

I'd also remind everyone here today that our agenda -- we're on number 6 of the agenda -- and that is a consideration of contest of election for Clark County Assembly District 9. Soon I'll be concluding my opening remarks and we'll move to the presentation of evidence. There will be an opportunity for public comment, upon which conclusion we will have a work session by the committee.

Yesterday the Assembly adopted the procedure for Election Contests of 1995, and also before you last night was a document filed in the matter of 1994/1995, Challenge of Election Assembly District 9, titled Assemblywoman Chris Giunchigliani's Motion to Dismiss (Exhibit C), challenge filed by Kathleen Von Tobel. That document was left at your seats yesterday, and I hope you had an opportunity to take a look at it last night.

I would indicate that this is not a court where we might, in fact, take this pleading and act on it and, in fact, throw the case out or whatever the court might determine to do. This is, in fact, a legislative hearing. We will certainly take this pleading under advisement and it can be incorporated in any way that the party deems to incorporate it in responding or for giving testimony.

The rules that we're following today, the rules of procedure for hearing a contest of election, were adopted by the committee yesterday. The evidence at the hearing of the contest will be presented in the following order: We'll have an opening statement

by Contestant, or counsel for Contestant; an opening statement by Contestee or counsel for Contestee; and the Contestee may defer this opening statement until the completion of the Contestant's case. A presentation of the Contestant's case and then a presentation of the Contestee's case, at which time there will be an opportunity for rebuttal testimony, if any, and any rebuttal is limited to issues previously raised. At that time we'll have a closing summary of the case by respective parties or their counsel, in the following order: Summary of the case of the Contestant, and summary of the case of the Contestee.

Both sides of this issue have been instructed on how to label any exhibits that they care to present to the committee, and it will be the intent of the chair today, that all people appearing before us will be sworn in.

So, at this time, would you care to open with your opening remarks?

(212)

England:

Mr. Chair, on behalf of the defendant in this hearing, I have as well consulted with Mr. Foley, and we would ask that we recognize that we're not in a court of law and we are not going to follow the kinds of procedures that those of us who perhaps practice there more than we should do, but we would like to make a presentation on behalf of the Motion to Dismiss (Exhibit C) before we begin the taking of evidence. It is a very discreet issue which we believe goes to the very jurisdiction of this committee to consider evidence. And we would ask that we be permitted to ask you to change the rules ever so slightly to allow that very legal argument to be made to you before we have the evidentiary hearings and the presentations of the case, which is the substance of the case and the underlying factual grounds which gave rise to this conduct.

Spitler:

My first concern would be that since we're not attorneys and this is not a court, this is strictly a legislative hearing, I'm not so sure your appeal would be before someone -- a judge -- who would understand all of these particular points of law. Mr. Foley did you wish to respond to that?

Foley:

Well just to clarify, really, it isn't my intention to have you go forward with the Motion to Dismiss. I was just talking to Kathy about the clarification of that issue. My position to it was, in fact,

the comments that you made. This is not a court of law, and that's how this Motion should be decided. So I just wanted a clarification of whether we're going to proceed with that Motion first or not. It's not my position that you should go forward.

England: Mr. Chair --

Spitler: Yes.

England: -- the law which I intend to argue to you is one passed by this very body. It is very straightforward, it is very easy to understand, and it is one which each of you would be compelled to read if, in fact, you lost an election and wanted to file a contest. I am not going to be arguing esoteric issues of law which we all heard in the hallowed halls of the law schools we attended. We are talking about the very fundamental -- the law which was passed by this body, and that's what we intend to look at; and all we were going to ask you to do in that Motion to Dismiss, is to look at the law that you passed that says, this is what a contest -- a statement of contest has to have, and then secondly we're going to ask you whether the contest which was filed by Mrs. Von Tobel in fact, met that statutory criteria.

So there is only one case which we have provided to the court -- excuse me, I'm sorry -- which we've provided to this hearing body. It is very, as well, very straightforward. In fact, this is a unique situation where I have a law which says we can't go to court, we must come here and make all of those arguments to you. You have passed a law that says you are the sole arbiter of these legal and factual decisions, and we think it's very, very appropriate before you go forward, to take a look at that Motion to Dismiss. However, we will, of course, we'll comply with any rule and any manner in which you wish us to provide you with information.

Spitler: Mr. Price has a question.

Price: Not a question. Thank you Mr. Chairman. But a comment, and it may be a little difficult for our attorneys to adjust to a different setting, but I would respectfully suggest that in mind set, it may be inappropriate to refer to one or the other of the parties appearing before us today, as "defendants," as was stated earlier, anyhow. Or did I miss something, because I did step in late.

England: Mr. Price, the law calls Ms. Giunchigliani the "defendant."

Price: Okay.

England: That is what she is called by the law, and while I recognize that that has implications in lay persons' terms, that is what she is required by law for us to call. But I would prefer, and I would certainly take your advice to heart, I would prefer to call people by their names. I think we all know who the players are and what the respective positions are.

Price: I'll make a note of that, and perhaps we can correct that during the session.

Spitler: Thank you Mr. Price. In discussion with the Co-Chair, we shall proceed, and that will be the decision of the Chair at this time. Thank you very much.

Foley: If I might, I have some binders that will --

Spitler: Yes. And Mr. Foley, prior to that as you come to the mic we need your full name, address and occupation, and we will be swearing in the attorneys, also.

[Mr. Foley distributed the binders to committee members, and this has been noted as Exhibit D for purposes of this Assembly transcription, and may be viewed in the Legislative Counsel Bureau Research Library.]

Let's see. Can someone over there --

Foley: Ignore any extraneous things on the binders. These are just what I had in my office.

Spitler: As these items are being passed out, I would just do two little housekeeping measures here. Remind everyone that we will proceed today as we did yesterday where we will alternate chairs approximately one and one half hours each. At the one and one half hour mark we will take up to approximately a fifteen-minute break. And yesterday we didn't do real well on our fifteen-minute break, so let's try to watch that a little bit more carefully today.

Also, if someone talks from the table, please remember to turn the mic on and then off if you're not talking. We try to watch for those lights to make sure that the secretary is able to pick up everything on the tape.

Okay, Mr. Foley, would you raise your right hand please. Do you solemnly swear or affirm under the pains and penalties of perjury that the testimony and evidence that you will give in these proceedings will be the truth, the whole truth and nothing but the truth and that you will answer all questions presented to you to the best of your ability and personal knowledge.

Foley: Yes.

Spitler: Thank you and begin.

Foley: Good morning Co-Chairs and members of this Select Committee. My name is Danny Foley. I'm with the law firm of Foley and Jones in Las Vegas. My address is 1901 South 15th Street, Las Vegas, 89104. I represent Kathy Von Tobel today.

Through the evidence that you have in front of you there, as well as testimony from what I anticipate will be just a handful of witnesses that I intend to call, I will prove that Chris Giunchigliani specifically violated, during the course of her campaign, NRS 293.5235, and that she violated it twice. That's 293.5235. That is the statute that was amended by the last legislative session in 1993 that involves mail-in voter registration.

I will prove that Ms. Giunchigliani specifically voted in favor of that legislation. The specific provision that she violated is subsection 10. That subsection provides that any person who assists another in filling out a mail-in voter registration application must provide name and address and signature of that assisting person on the application. Ms. Giunchigliani -- and the evidence will be presented, and she -- I haven't had an opportunity to ask her, but I will ask her, if she did, in fact -- I have an affidavit from Mrs. Gertrude Taves where she specifically states that she asked Chris Giunchigliani to help her with it, that Chris Giunchigliani filled out everything on the form save and except for the signature of Gertrude and Gordon Taves. If Ms. Giunchigliani recalls that incident and so states, she will, in effect, then have admitted to violating that statute.

Subsection 13 of that statute states that violation of subsection 10 is a felony. I will also be presenting to you evidence of three different mail-in registration applications that we've been able to find that were signed and submitted by non-citizens. These are three different Culinary members working at three different hotels, that sent in these mail-in registrations. In all three of those instances, the persons assisting with those registrations were Culinary organizers or agents at those hotels. And in all three of those instances, those organizers or agents filled in the bottom of the forms, as is -- what they're obviously required to do if one looks at the form.

We've been able to talk to two of these non-citizens. These are both -- all three of them to my understanding, are legal aliens that have green cards and authorized to work, they're just not U.S. citizens. In talking to two of them, one of which actually voted and the other did not. Jose Cortez Solano did not vote. Nga Hunnh -- that's N-G-A is her name, and you have that affidavit in that package -- talking to both of them they've stated to us that they told their organizer at the hotel that they were not U.S. citizens, and they said, "don't worry about it, sign it." They signed the registrations which immediately above their signature it stated, if anything contained in this affidavit is false, it's a felony and you're subject to a civil penalty.

We will show that the Culinary Union was a very strong supporter of Chris Giunchigliani's and worked closely with Chris Giunchigliani. Absent an ability to have subpoenaed anybody prior to this hearing, I haven't been able to take any depositions of any Culinary members. We have those three and one of the things I wanted to do was request from this committee, subpoena power to take the depositions, which I tried to do. I got hold of Mr. Ted Pappageorge who was the Culinary Union organizer who signed the bottom of Nga Hunnh's affidavit, and asked him if I could take his deposition and he said, no, please talk to the Culinary attorney, which I did and the Culinary attorney said we would not be producing Mr. Pappageorge. And later, Ms. Denezza who did Jose Cortez Solano's affidavit, they would not produce them without a legally enforceable subpoena.

We'll present evidence that prior to the election day on November 8th, the Culinary Union bused in to the Election Department for purposes of having members vote early, numerous busloads of Culinary members, including 66 members who were registered in the

subject district. We will present evidence that while in the voting -- the polling place -- which is the election office, Culinary members and organizers brought with them campaign literature that included Chris Giunchigliani's, and stood in a proximate location to people while they were voting, giving them instructions, to the point that eventually some of them had to be removed from the polling place. That evidence will go to show, among other things, that there's malfeasance on the part of the Election Department. The polling place for early voting being their very own office that was not maintained as per the statutes.

We'll present evidence that somewhere between 24 and 29 felons voted in this district, and that these felons' registrations were not purged prior to the time of the election. Again, an instance of Election Board malfeasance, which is the first subsection under NRS 293.410, upon which a candidate -- an unsuccessful candidate -- may challenge or contest an election.

We'll present evidence that at least 42 illegal votes in this district, coming from voters who actually voted who registered at either non-existent buildings, registered at false addresses or registered at commercial non-residential premises. Again, Election Board malfeasance.

Because of the secret ballot that exists in our state and virtually everywhere else, short of being able to bring 29 felons to Carson City with me -- find them in the first place and have them agree to come up and admit to additional felonies by having voted -- short of being able to find 42 people whose addresses don't match anymore and bring them to Carson City with me to have them testify that their registrations were bad, I'm not going to be able to prove who these people voted for, it's impossible. The ballots are secret, although we can tell that people voted because they signed in, there's no way to tell who they voted for, as it should be.

But what we will prove is that from our investigation, which is admittedly tremendously underfunded and undermanned, which doesn't have any subpoena authority or power, we were able to locate 137 bad votes of people that actually voted. There were even more numerous bad registrations in the district which is not an insignificant fact, but for purposes of conserving time during our

investigation we didn't run down those trails to find out any more about those registrations.

We'll be able to show the direct and specific involvement of the Culinary Union and we'll be able to show blatant and obvious violation of an election law by it's sitting Assemblywoman and candidate who actually voted in favor of that election law and discussed it on the floor of the Assembly at the last session. Thank you.

Spitler: I have a question before you sit down. I was a little bit confused as you were going through these things. Are you implying that it's wrong for the Culinary Union to encourage its members to vote?

Foley: No, of course not.

Spitler: Okay. The numbers that you're citing for us, have any -- did any -- did all of these people vote for Chris Giunchigliani?

Foley: I don't know. They all voted and there's no way of telling who they voted for.

Spitler: You have indicated in a couple of the opening -- your opening remarks, malfeasance on behalf of the Election Department.

Foley: Yes.

Spitler: Okay. Have those charges been brought before the Election Department, or has that been brought to the Election Department's attention?

(762)

Foley: We got the information regarding the voting -- the early voting that took place and the problems that occurred there, from the Election Department.

Spitler: So the Election Department is on the record as saying that they allowed inappropriate voting on their premises?

Foley: That's what they have told us. My understanding is they're going to testify otherwise today.

Spitler: Okay, but all of the material you've given to us thus far are irregularities within the voting pattern and not anything directly related that Chris -- these people even voted for Chris Giunchigliani, or that she, in some way, was directly responsible for organizing these things.

Foley: We're going to find out, I hope, a little bit today --

Spitler: Okay.

Foley: -- based on questioning of some witnesses, as to that involvement. I haven't had the ability -- I tried to do it, and just haven't had the ability without subpoena power.

Spitler: Well, and you know we're not doing cross-examination. This is not a court where cross-examination is going to be allowed. There is an opportunity for rebuttal at an appropriate time. Mr. Price, you have a question?

Price: Thank you, Mr. Chairman. You probably know the answer, but you've mentioned a number of violations and specifically NRS 293.5235, that state it as a felony. I presume that either your client, Kathy or yourself on her behalf, or somebody, has filed a complaint with the District Attorney's Office where -- for those specific violations which would be aside from this, but I'm asking for information, because what we're talking about is a violation of law that would be handled initially by the District Attorney's Office, I assume.

Foley: That's right, and I wouldn't be up here asking this committee to find guilt or innocence with respect to a felony. What I'm pointing out is subsection 10, which is a pure violation of the statute. Thirteen, subsection 13, says, violation of 10 is a felony, and that's for another tribunal. The answer to your question is, it has been turned over to the FBI given that it's a mail-in, and that this involved a federal election, as well, since there were federal [talk over] officers.

Price: -- other officers, other people. Thanks.

Spitler: Are there other questions? [No response] Did you have any other remarks?

Foley: No, that's it.

Spitler: Okay. [To Ms. Giunchigliani's counsel] Opening remarks?

England: Yes, thank you very much, Mr. Chair. (Indiscernible)

Spitler: Excuse me one moment. If you would approach the stand and --

England: Oh, I'm sorry.

Spitler: -- raise your right hand. Do you solemnly swear or affirm under the pains and penalties of perjury that the testimony and evidence that you will give to these proceedings will be the truth, the whole truth and nothing but the truth; and that you will answer all questions presented to you to the best of your ability and personal knowledge.

England: I will.

Spitler: Thank you for being here today.

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England: My name is Kathleen England, I'm with the law firm of England and Associates. My home address is 2829 Whispering Wind Drive, Las Vegas, Nevada. My business address is 704 South 9th Street, Las Vegas, Nevada, and I am here on behalf of Assemblywoman Chris Giunchigliani, which I frequently mispronounce.

I would like to address the issues. I wanted to address -- before we got into the substantive nature and the obviously the issues, which are far more entertaining, as Mr. Foley has raised them. And I want to tell you why we filed this Motion to Dismiss (Exhibit C) and I want you to seriously consider it. And even if you don't grant that Motion to Dismiss, I want you to use the analytical framework that we give you in that Motion to Dismiss to evaluate the evidence that's going to come before you.

First and foremost, we ask you to dismiss this Statement of Contest because it doesn't meet statutory requirements. It's not even close. The statute that this body passed, and which has been in effect in Nevada for over 90 years, said that a Statement of Contest has to contain certain things. There are seven things it has to contain. Ms. Von Tobel's didn't contain six of them.

In 1921 the Nevada Supreme Court considered a case on a nearly identical issue arising out of a contest of an election in Minden, Nevada for County Recorder and Auditor. That was an even closer race than this one. It was 304 to 306, and the Nevada Supreme Court said that failure to allege what was required by the statute -- that is, the person -- the Contestant -- has to, in their Statement of Contest, have the statutory -- fulfill the statutory requirement that you allege that you're a qualified elector in the district in which you're contesting the election. If you don't have that it is a fatal flaw in your Statement of Contest. Ms. Von Tobel didn't do that.

I'd like you to look at page -- or excuse me, Exhibit A -- excuse me, Exhibit 1 to our Motion to Dismiss, and I'd like to walk you through that, and I'd like to show you what's wrong with it. Exhibit A is -- well, it's not even called a Statement of Contest --

Spitler: Excuse me. Exhibit A or 1?

England: Excuse me, Exhibit 1.

Spitler: One, okay. Does everyone have that?

England: Everybody got that?

Now, a Statement of Contest is governed by NRS 293.425 which says, you've got to file it and it's got to be in conformance with 293.407. And 293.407 is very, very, very straightforward. It says, except when the contest involves -- dah, dah, dah -- it says you must file a written Statement of Contest setting forth, (a) the name of the contestant and that he is a registered voter of the political subdivision in which the election is to be contested or part of it was held.

Now, let's look at Ms. Von Tobel's statement. First of all it's not called a Statement of Contest, but that's probably one of those form issues, it's like who cares. The Secretary of State can probably figure out what this is. Nowhere in the four corners of this document does Ms. Von Tobel fill that statutory requirement that says that she is a registered voter of the political subdivision in which the election is to be contested.

Now in 1921 the contestant in Minden, Nevada did the same thing and the Nevada Supreme Court said, you don't have a contest. Now, let's just go on. That's subsection (a). Subsection (b) says -- of 293.407, says you have to list the name of the defendant, the defendant having already been defined, as the person whose election you're contending. Not once in this document filed two minutes before the deadline, does Ms. Von Tobel tell you who the defendant is. She never states that they -- that Chris -- is, in fact, the election winner who she's contesting. So now we've got two fatal flaws.

Number three. It says that, the law requires that you state the office to which the defendant was declared elected. Not once in her document does she declare that Ms. Giunchigliani was elected to the office which she has contested. Subsection (d) says the particular grounds of the contest and the section of Nevada Revised Statutes pursuant to which the statement is filed. Now this is the one requirement out of seven that she barely meets, but she only meets half of it. She sets forth a series of things that she said has gone wrong. She never cites a Nevada Revised Statute, and the law that this body passed says you're supposed to put the statute in here. If you claim that there's been malfeasance or misfeasance or something, or there's been a violation of law, you're supposed to put it in your Statement of Contest. It's not here. She does substantively argue that there's been malfeasance, that election workers were passing things out, election volunteers were doing this, that and the other thing, voters had addresses that were businesses, signatures didn't match, illegal aliens voted, voters were registered at rent-by-the week -- she does allege substantively. So we will concede that she met half of these, but she never cites a Nevada Revised Statute.

Now the next subsection (e), of your statute, says that the Contestant must state the particular grounds of -- excuse me -- must state the date of the declaration of the result of the election and the body or board which canvassed the returns thereof. Not once in this statement does she follow that statutory prescription.

Now on to the next one. Subsection 3 of the very same statute, and this is perhaps the most important one. It says, the Contestant shall verify the Statement of Contest in the manner provided for verification of pleadings and civil actions. There is no verification on here.

Pleadings and civil actions must be verified as we've set forth in our Motion, with specific language. There is not even a notary stamp, but that's not necessary. But NRS 15.010 -- wait a minute, let me get to it -- sets forth, and this is another law that you passed, sets forth the requirements for verifications of pleadings and civil actions. And this is what you've got to do, and it's on page 6, the actual statutory language is on page 6 of our Motion. Nevada law requires that this is how you verify and this is the way to do it, and it must state in all cases of a verification of a pleading, the affidavit. Now look at Ms. Von Tobel's Statement of Contest. It is not an affidavit, it contains no verification. The affidavit of the party shall state that the same is true of his own knowledge, except the matters which are therein stated on his information and belief, and as to those matters he believes them to be true. Nowhere in the four corners of that statement does Ms. Von Tobel indicate that any of the matters set forth therein are true of her own personal knowledge, nor does she even go the extra distance and say, well, I don't have personal knowledge -- for example I was not in the particular polling place where I think malfeasance has occurred -- but I've been told and I believe that to be true. Not once does she do that. So that is the sixth statutory requirement she has failed to fulfill.

And the last, but certainly not least -- and I am unable to review this -- is that all the material that you file in a Statement of Contest, are supposed to be filed in triplicate. Now, she FAXED this to the Secretary of State's Office two minutes before the deadline. There's no indication to me, but of course this is easily checked out, whether the Secretary of State received three FAX's that day.

But I'm not here to promote form over substance, and in that area we would not contest that that was a major reason why this should be dismissed. But all of my training as a lawyer says that if you passed a law you have to follow it, and Mrs. Von Tobel didn't do that. So what does she do? Now this is a campaign that had lots of money, lots of lawyers, and as all of you can now read your own statute, it says, here are the seven things you've got to put in your statement. These are not esoteric legal concepts that anybody has to know.

The next thing that happens is that she files a supplement on November the 29th, and attempts in some way, I guess, to cure some of the deficiencies of the original filing. Now the Crownover

case, which I've also given you -- once again, the Minden County Election Contest -- said that you can't amend unless the amendment is filed in a timely fashion. You can't amend and cure fatal deficiencies in a Statement of Contest by filing something later. And I would suggest to you that that's a very practical common sense approach, because if, in fact, you could cure anything by amendment, it could mean somebody could FAX the Secretary of State something that said, I contest. It doesn't fill any of the statutory requirements, and then a month later file all the stuff you're supposed to file the first time around and say this is just an amendment, or supplement, to my earlier filing. You passed a law that said it's gotta have these seven things, and you had a good reason for putting every single one of those seven things in there. And she only met one of them, and I would suggest that's a half of one.

So we think her supplement is inadequate to cure the original deficiencies and that her Statement of Contest is fatally defective, but that certainly is for you to decide.

But importantly enough, the second grounds that we asserted -- the second ground that we asserted -- in our Motion to Dismiss was a due process argument. And the due process argument grows directly out of the statutory requirement argument. Your statute which requires certain things to be in a Statement of Contest, would certainly in most ways, in a large part, provide the defendant, who is the person who was elected, with due process. Ms. Giunchigliani is entitled to due process under both the Nevada Constitution and under the U.S. Constitution. And due process is nothing more than three basic elements. Number one, fair notice of the charges against you; number two, a meaningful notice of the evidence to be used against you; and number three, an adequate opportunity to be heard. The law that you have that says certain things have to be in the Statement of Contest would certainly take us well on the way to being afforded fair notice of the charges. But what happens when you allow the Statement of Contest to go forward when Mrs. Von Tobel has failed to comply with six out of the seven requirements? Fair notice of the charges against you. Look at the charges. That Election Board members have committed malfeasance. Well just because Ms. Giunchigliani is the winner of the election does not mean she is the insurer that every voter who voted, voted properly.

That's not her job. If that were her job, she would be the Registrar of Voters, Ms. Ferguson would be doing something else.

Each of you were elected in an election very similar to this one. Each of you is not the insurer that every person who voted for you or voted for your opponent was, in fact, a properly registered voter who didn't engage in any bad activity before they came to the voting booth that day.

But what you will allow, if you allow this contest to go forward, is you will deprive Ms. Giunchigliani of her due process because we can't know what the charges are against her. This black book that Mr. Foley handed me today is the first time we ever had any real notice of what they were contending, and that is improper. We are here in Carson City, Nevada. I have no access today to get to the Registrar of Voter's Office and look up some of the things that they've contended. And Mr. Foley, for example, has even told you that there were three voters -- excuse me, that there were three people, I guess -- who are non-citizens who registered, and he's admitted that only two of them voted.

Now what are we doing here? We should have known this. This should have been all sorted out before.

The statute that you passed, which is 293.425 says that when you're gonna file a Statement of Contest, you're supposed to file all depositions, ballots and other documents are supposed to be filed within the time frame required for the contest. Your statutory scheme says if you're the loser in an election, as Mrs. Von Tobel was, and you want to contest that election, you better do it quick. So you spend the next 14 days trying to figure out if there are grounds and if so, you file it.

Not to require her to comply with the law then deprives Ms. Giunchigliani of her statutory rights because she can't then respond to it and properly prepare evidence to come here before you today.

So what did we do? We did exactly what we thought was appropriate. We tried to conduct discovery. I'm a lawyer, that's what I do most days, and we did it the normal way you try to do it. You go to the other side and you say, okay, you give us your evidence and we'll give you ours; and that's exactly what I did. I

asked Mr. Foley to produce all the documents they had supporting any evidence that they have that they were going to present here today. And Mr. Foley, as you will see in a letter which is Exhibit 3 to our Motion to Dismiss, said, Ms. England, I have neither the time nor the inclination to provide you that information.

Instead, Mrs. Von Tobel, last Thursday, was spending her time at news conferences telling the voters of Southern Nevada, that there were 170 questionable votes. So I, of course, asked for the 170. Give us the list of 170, and of course, they have neither the time nor the inclination to provide us with that information.

The other thing I did was I asked to take Mrs. Von Tobel's deposition, and they told me they would not produce her for a deposition. Yet they took peoples' depositions. They dragged citizens in, they dragged a non-citizen in.

Now I'd like to tell you a little bit about why this due process argument is very important in what you are now going to hear. I want you -- every piece of evidence that's brought before you, while I understand that hearsay is admissible here, and unauthenticated documents -- but I want you to look at everything very, very critically. I want you to challenge me. If you don't think that the source of the information that I'm giving you is trustworthy or reliable. Mr. Foley stood here under oath, which is an unusual thing for us lawyers to do, and told you that two non-citizens registered to vote in violation of law; and that's probably true from what we can tell. And he also told you that these people have been talked to, that there were three and only two of them voted.

Let me tell you what's going on here. Last Friday night at Mr. Foley's office they brought Mr. Jose Cortez Solano into their office to take his deposition. This gentleman is probably a member of the Culinary Union. He speaks not a word of English. Mr. Foley admitted to me since I admitted to him, I do not speak Spanish either; so both of us were unable to talk to this person. It's apparent that he has, perhaps, filled out a voter registration card -- I mean a voter registration form -- and sent it in. In order -- the easiest thing is, is Mr. Cortez Solano is a non-issue. The man didn't vote.

But in order to muck up this issue and to prove that the Culinary's doin' somethin' wrong and that Chris G's in on it, they drag this man

into his office. They didn't bring an interpreter, Mr. Foley had no interpreter there. Mr. Solano was accompanied by his friend Hector, who is not court-certified, and they didn't tell, Mr. Foley and Mrs. Von Tobel, didn't tell Mr. Cortez Solano that what they were gonna do is place him under oath and ask him to admit to a felony, which carries a very strict jail term and a \$20,000 civil fine. They didn't happen to tell him that or indicate to him that he could be represented by counsel. And Mr. Cortez Solano didn't vote. And your own rules say that we're here to figure out whether there are 124 people who voted for Chris G. who shouldn't have voted for her, such that the election results would be changed.

That's what we're here to find out. So when we talk about Mr. Cortez Solano, he didn't vote. So it's impossible that any discussion about him will change the outcome of this election.

Similarly, we talk about felons -- or ex-felons voting -- how do we know that they all voted for Chris Giunchigliani? Perhaps some of them voted for Mrs. Von Tobel. I don't know. And we will never know the answer to that question.

But this due process issue, if I may go back to that, says that what we're trying to do and what we have spent the last two weeks doing, is trying to figure out if there are, in fact, that many votes which are questionable, and if so, can those votes be attributed to Chris such that they would change the election?

Mrs. Von Tobel refused to provide us with the information so that we would know what to look up and who these questionable voters are. And this morning is the first time I have ever seen most of these documents and most of the contentions that they're making. This is not how this process should work because it is truly, as we come here today, trial by ambush. I don't try cases that way, and I don't think it lends to our -- your process, and the difficult decisions you have to make about who's telling the truth and who isn't.

They didn't bring Mr. Solano in here today. If they brought Mr. Solano in you would ask him a question, and he would be very polite to you, I am sure, but he doesn't have a clue what you're saying because he doesn't speak English.

The other person that they mention, Mrs. Hunnh, only speaks Vietnamese. Now I don't know whether Mr. Foley speaks Vietnamese. I do not speak Vietnamese, and Mrs. Hunnh refused to come to her deposition even though they tried to place her under oath and ask her again to admit to a felony, if in fact she's a non-citizen and she registered to vote.

Now let's keep in mind that the people -- that the documents they signed are in English and neither of these two people spoke English, so they, quite frankly, perhaps, didn't know what they were signing, and that would certainly obviate any specific intent to commit the crime that Mr. Foley would like them to admit to.

But let's look in the greater scheme of things. You're here to find out what the truth is. Every document that we will be presenting to you, we will show you the source of that information. We were not able to figure out who we should bring with us today except in a very general sense, to testify before you so that you don't have dueling affidavits. You know, Mr. Foley comes in and says one thing, I come in and say something else. We are prepared -- and Ms. Giunchigliani's due process requirements -- require that you give us an opportunity to present additional evidence, to take depositions, to subpoena people here, once we have fair notice of the evidence and the charges against us. Certainly the black book they've handed us today is a step in the right direction, yet we need an opportunity to be heard. First we need an opportunity to question the information they've given us, to look up the official records, to do those kinds of things, but certainly we need an opportunity to take certain depositions.

The one I wish to take -- the one I noticed last week and the one they refused to comply with -- was that of Mrs. Von Tobel. So I would ask this body, at this time, to issue a subpoena requiring Ms. Von Tobel to submit to a deposition. We can certainly do it here in Carson City or back in Las Vegas where we all reside. Whenever the committee sees fit, we will make the appropriate arrangements for the expediting of that deposition so that the information can be provided to the committee. This committee, while it need not stop this hearing in order to allow that process to happen, I would ask you to issue that subpoena. You do have the power to issue the subpoena and to require her to submit to that deposition.

Until we see what other evidentiary information they provide to you, I don't know who else I need to subpoena because I don't -- when Mr. Foley, for example, said that these two non-citizen people who voted were talked to, I would like to know who it was that talked to them since Mr. Cortez Solano does not speak Spanish [sic]. I see in the evidence that they've provided to you, it's a signed statement in English by Mr. Cortez Solano. I would daresay he probably didn't know what he was signing at that point, since he does not read English either; and we would also want to take the deposition of anybody else who was going to proffer that evidence.

And that's what I'm asking you to do when I say, look at the evidence critically. What indictable liability is there? If we are submitting affidavits, then they should be in the form that Nevada law requires. They should have this verification. The person who is offering the evidence in an affidavit or verification has to say, I have this information of my own personal knowledge or I believe it to be true because of thus and so; and then they have to acknowledge that they are signing under the pains and penalties of perjury. Not one thing that Mrs. Von Tobel has submitted to you -- even though she's required by law -- contains that requirement that she signs this of her own personal knowledge or upon information and belief, and she believes it to be true, and secondly she's doing so under the pains and penalties of perjury.

As to each of the substantive issues that we expect they will now introduce to you, I would ask that we be permitted to address the substantive issues after they have provided you with the evidence, because in that way we can best -- then best, I suppose -- proffer our own contradictory evidence to you.

But I'd like to just point out in closing, at least at this point, that an election contest -- the right to contest an election -- is a creature of law. It's because this body, in which each of you are duly elected members, decided that that was appropriate. There is no constitutional grounds for it. So if you all created it by statute, you get to write the rules, as you often do. The law is quite clear and straightforward. It's even -- the most naive person who's running a sophisticated election, ought to be able to read those rules and figure out what it is that needs to be in a Statement of Contest. Mrs. Von Tobel had access to some of the finest lawyers in Las Vegas, certainly. If she couldn't understand what it meant, she could

certainly go there. She had two weeks to figure out what the law meant. She didn't follow the law. She didn't follow your law that you passed on behalf of all of us, the citizens of Nevada. Yet what she wants to do is say, I'm not gonna follow the law, but the net effect of what she wants you to do is to give her the seat that Chris sits in, to make law.

So she's saying, I'm not gonna follow it to get here, but I wanna come up here and help you make that law. We suggest that that's a highly inappropriate -- I understand that you are very concerned, as is everyone, about technicalities, and you don't wanna dismiss something because it's a technicality, because somebody didn't file the right form or do the right thing, because people are very concerned about criminal cases being dismissed. We're not talking about technicalities here. We're talking about the very fundamental rule that you set down. You have seven rules and she violated six of them; and it's not even close. And on that basis, and that basis alone, you ought to dismiss this election contest at this time, and we should not have to go forward. But if you do choose to go forward you should, nevertheless, be mindful of the rights of Ms. Giunchigliani, her due process rights, to provide her adequate notice of the evidence against her and against the election, I guess, and then an adequate opportunity to be heard so that she might present contradictory evidence.

Thank you very much.

(1756)

Spitler:

Thank you Ms. England. I can appreciate your comment about this getting information at the last minute. It is, of course, all new to us also. So hopefully we will be able to take the time so that we can all process this because it's a very important matter before this legislative hearing today. Are there questions of Ms. England? Mr. Anderson?

Anderson:

Ms. England, just for my understanding. I want to be sure that I've got this. This point really does concern me, given the multitude of voting places in an Assembly District, and we're only concerned about Assembly Districts here.

It's not possible for a candidate to be at every single location, nor at the filing of every affidavit that would potentially come forward.

What would you consider, then, therefore, to be knowledgeable -- if somebody comes to you and says, ah, I think something happened. They didn't take off their button -- political button -- in time; you know, they got within the 100 feet, or there's a sign that's located within sight of the voting place. Would you consider those kind of infractions to be of the type you're speaking of?

England: It would appear from the document Ms. Von Tobel filed, that she considers those serious infractions. And certainly it would seem to me just as a voter, and as a person involved or concerned with the electoral process, that the rules that have been set up about -- you know, like a campaign in a place and you can't be bothering people inside, and you can't be inside coercing people to vote a certain way, are very, very important. It would seem to me, though, that -- and your rule requires it -- the statute requires this -- that if your election person, let's say your campaign person reports to you that I was at such and such a precinct and some mishap occurred where somebody came in with a big button or a sign or something, that the appropriate thing to do on that day, which is frequently exercised by nearly every candidate, is to make the protest to the election official involved, to see if the issue can be resolved immediately. And Mrs. Ferguson is here, Kathryn Ferguson, the Registrar of Voters in Nevada -- I mean in Clark County -- who is in charge of all of this, is here today to present you with all of the training that they do. It would seem to me that the first thing you'd do -- the first recourse as a candidate if something improper is going on -- is you report it immediately to the Election Board official and you insist that it be stopped. If it's not stopped then you go to the top. Everyone knows what Kathryn Ferguson's number is. That's exactly what happens. And then if you don't like that, you go to the press, you go to the District Attorney and you do everything else that you -- those of you who are politicians -- know how to do to make sure that it is -- the problem is addressed. Certainly if there's campaigning inside the polling place, it needs to be stopped right now, and then in the aftermath of the election, let's see what we can do to prevent it and is somebody at fault.

But it also seems to me that what you do now, if you're gonna do an election contest, is you now go back and let's see if we can piece together what happened in that polling place that day.

Anderson: So then you are of the opinion -- to cut back to the base here -- if such an event took place and the local person was informed, then -- and to your satisfaction, or even after the election was over with -- you heard of these multitude of sins, then your next recourse would be to come to us.

England: It's really --

Anderson: And that's it, because we're the next in line. After the election Voter Registrar has been informed after the fact, we're next. There's nobody else between us. There stands no other -- except through the Secretary of State's Office -- to inform. Is that not the only other logical place to run --

England: The places to run --

Anderson: -- what you just said.

England: Well, the places to run depend on what your purpose is. If, in fact, you think these improprieties in a polling place actually affected the outcome of the election, then the Statement of Contest is the way to address it. No question about that. But if it is to clean up the process, we've identified, you know, a problem that's now created in the polling place, then certainly that would, again, be addressed to your elections committee and to the Registrar of Voters. So certainly. But it's two entirely different issues about whether the outcome was affected, and that's your own rule.

Anderson: Right.

England: At this time, I would like to present -- now I'm without -- still reserving our right to continue to proffer our due process argument -- we would like to present our packet of evidence on which we were able to put together and to provide you with some charts and things that may assist you in evaluating the evidence that's going to be presented. All of our affidavits are in the proper form and we try to figure out where the information might be coming from and what might be an issue today. And in nearly every instance we have tried to find a neutral person who was an observer of the events on the day in question to tell you what happened. So I --

Anderson: Thank you, Mr. Chairman, for my question.

England: May we present that now?

Spitler: Are you wanting to present your case?

England: No. Just a packet [talk over] --

Spitler: To distribute --

England: -- what will be our documentary of it.

Spitler: And this is a part of your opening statement?

England: Yes.

Spitler: Okay. I have one question before you do, though. While you've indicated that you have not had really an opportunity to depose certain people behind the challenge, particularly Mrs. Von Tobel, the kinds of things that you've seen, either through the press conferences or whatever, have you been able to go backward and find a paper trail where someone filed a concern with the Election Department, or in fact, filed anything with the District Attorney's Office to establish that someone tried to correct what initially would be a small mistake, until they saw it being bigger? Is that paper trail in existence?

England: In certain instances, yes, in other instances it is not. In an effort to speed up the process, I, in fact, did a Request to Produce to the Election Department, and asked that the Election Department Friday afternoon collect all of their original documents related to the Assembly 9 election, and bring them here today. And Mrs. Ferguson and the District Attorney, Stewart Bell, have assured me that that has occurred. So that, for example, if in today's hearing it came up that this person's a non-citizen and they registered and they voted, or this signature doesn't match -- we brought -- we asked them, and they're in Mrs. Ferguson's care and custody, all of those original documents so you can see them today, because we thought that would be a quicker way to do it. And Mrs. Ferguson has assured me we have every precinct register with all of the votes in it, and not the tally, but the votes, which voters voted. She brought them here today so that you could see that.

But, yes, in response to you, we went back and tried to backtrack, but we were at a loss in some instances, to figure out which precinct we should be talking to, which polling place we should go to, where should we find those neutral people and say, what happened, were people campaigning inside your polling place? But I'd like to present that evidence now. Also, within that evidence is a chart of every polling place, a chart of every Election Board official, a chart of every campaign poll watcher on behalf of each campaign, so that when these names are bandied about in front of you, you can go back and cross-reference it all, so that we thought that would be helpful to the committee.

Spitler: Before you continue with your opening remarks, Ms. Tiffany?

Tiffany: Thank you Mr. Chairman. I just have a question, I think, of Mr. Chairman, I want to make sure that your request for dismissal, because it doesn't meet the statutory requirements of filing, are we looking at that as a separate issue, or is this part of the body of the whole of the evidence?

Spitler: As we opened the meeting today, we took this particular Motion for Dismissal under advisement, and indicated to the parties that they could certainly use it in their arguments before us.

Tiffany: Okay --

Spitler: We are not a court, though, in that where we have to review this prior to proceeding with a regular, a normal legislative hearing. A court, and again, I'm not an attorney, but as I understand it, a court would actually take this, review its merits and make a determination whether they would proceed with the case. In a legislative hearing we don't do that. We're proceeding with a regular hearing. The information that's in here, I'm sure it's very helpful to the case or whatever, and it's certainly very valid to be presented to us. Does that help answer your question?

Tiffany: Yes. So it's a viable whole for information then?

Spitler: Yes.

Tiffany: Okay, great. Thank you.

Spitler: Any other questions? Yes, Ms. Buckley.

Buckley: More a statement. Thank you Mr. Chairman. I appreciate the information contained in the Motion to Dismiss, but I am in agreement with the Chairman that it's proper to take the matter under advisement, and to proceed with taking the evidence today, so we can get to the heart of the matter. I do think it would be appropriate for us to consider the Motion to Dismiss. I think we could proceed in that fashion, but I am in agreement that we need to get on with hearing the evidence in this matter.

With regard to the due process argument alleged, I am in complete agreement that the process should be full disclosure, and that in order to adequately prepare to a challenge against you, you should have the opportunity to read that material and to prepare for those arguments prior to the minute before the hearing begins.

But I am also of the opinion that we need to proceed expeditiously in order to commence with the business of hearing bills in the State of Nevada; and that at this point the most expeditious way to proceed would be to proceed with hearing the evidence, and then if Ms. Giunchigliani and Ms. England feel that they need additional time to prepare, that they then present that in the form of the motion to the Chairs.

I think that this is another matter we can look at in Elections and Procedures to assure that both sides understand what evidence exists prior to the minute the hearing begins so that we can ensure an orderly process. But at this point, I am in full agreement, that we need to proceed with the evidence. Thank you.

Spitler: Any other questions? Ms. Tiffany?

Tiffany: Thank you, Mr. Chairman. Kind of a comment to that is -- I'm not an attorney and don't intend to be an attorney, but in a normal legislative process, when we are taking testimony, the person does not necessarily have any information ahead of time for point and counter-point. That's what we're here to hear, not you. So I just want to say that you've been flipping -- for me -- you've been flipping back and forth between a statement about what a court decision is and your process, where you're approaching this, and I find that as much as you can possibly stay within the legislative

process, I would very much appreciate it, because when you're talking about these rules for example -- the seven or eight rules that she had to follow to file -- and then the comment about she had lots of money and lots of attorneys, well I know by mine personally, I read statutes, I get advice and I get three different, four different opinions. As an example, just with our 21/21 split. So I would like to submit to you this is very subjective, it is not black and white. And when you say, must meet the statutory requirements, there is some give and take and that. So I would just request or appreciate if you keep it more towards a legislative process.

Spitler: I think I would respond that I think Ms. England is doing that. It's the cases and pleadings and all of these things, certainly, as we're not attorneys and this is not a court, but I do think some of the points are valid that certainly can be brought up. I would also indicate that the one point on the law, that she states, you know, if I did it wrong you guys could get me too, or whatever. So, those things, I'm sure, will be a part of the hearing. Any other questions? Mr. Price.

Price: Thank you, Mr. Chairman. This is good straddle the fence. I agree with both Mrs. Tiffany and yourself. Having been here awhile, and of course they, as a group of people, if I catch heck, just be on the politicians, but when we have attorneys -- and it's been my observation over the years -- that when we have attorneys appearing before legislative committees, there has historically, generally, been a problem with them trying to present their case as they're trained and used to doing it, as opposed to lobbyists and other people that come before us.

So I think we have to be a little bit tolerant, but we have to continue to ask questions so we can fortunately get to the bottom of the issue quicker and faster than a court of law can; and it's one of the reasons I like our legislative process. But I would agree to some extent, but I certainly don't think it's fatal -- except for those attorneys who have been among us for a few years, our legislators, there is a tendency, I think, for outside folk when they appear, to sound more attorney-like. Of course, it builds us up. We're like the Supremes, you know. Thank you.

Spitler: Thank you, Mr. Price. Mr. Close.

Close: Thank you, Mr. Chairman. Last night, as I was reading through the data which we had available to us, I read, as Ms. England has brought forth, the criteria which she described as far as to things that Ms. Von Tobel was supposed to provide for us. However, I kept seeing the word District Court, and I said, how does that apply to a legislative hearing, and so I said, yes, those are probably realistic criteria to be used in a District Court, but this is a legislative hearing. And so my concerns as to whether or not it's truly applicable in this environment, would be question number one. Question number two, if I could Ms. England, use the term, fatal flaw. In reference to that same situation, I'm not an attorney either, and would like to have you expand on that term, as you replied to 293.407, said, there was no fatal flaw. Thank you, Mr. Chairman.

England: Mr. Close, a fatal flaw in both -- as a legal term of art -- means that the issue dies as a result of an absence of something or an assertion of something. And let me explain it in terms of what it means in this context. In order for you to conduct this hearing, it is our position that you have to have jurisdiction to hear it. Jurisdiction means you have the power to hear it.

You have given yourselves, by statute, the power to hear election contests, because until you fought -- until you passed a law, which is 293.407 and 293.425, which you have to read in conjunction with each other, there was no such thing as an election contest. So you gave yourselves the power to do it. In order to give yourself the power to do it, you said that the loser in an election has to follow the following steps. You gotta file it, you gotta do it within fourteen days if there's no recount, on and on. The power for you to hear it, is engendered only when the loser -- and I stress that because there's another statute that says, winners can't contest elections. The power to do it is a creation of your own statute, and if you don't have the power then you can't hear it.

For example, this committee would be powerless to hear an election contest of Assembly District 9 in Montana, and if a Montana candidate files with you and says, I want you to hear my election contest, you would have no statutory authority to hear that. Unless of course, the Montana constitution said Nevada's gonna hear our election contests.

So what I am saying, and what the court upheld in the 1921 Crownover case was that you are the only people we can come to. And that in order for Ms. Von Tobel to have the right to come here and present evidence, she must first do what your statute says she must do. One of those things -- and you have to read the two in conjunction -- we have no right to go to District Court and contest what you're doing. You gave us the power only to come here, and said we must come here first.

Now, if you violate Ms. Giunchigliani's constitution -- you have constitutional rights -- then I can go to court and contest it. If you set up some phony procedure that had no due process whatsoever, that said you were going to hold your meetings in secret, we could never know the evidence against us, and we'd never be told -- that would certainly offend due process. I think we'd all understand that. And we could go to federal court and say, you're violating her federal rights.

But no, you provided a procedure and that procedure was carefully calculated, I think, to give this due process, so that everybody knew what the contest was about and why it would affect the outcome. And what we're saying, the fatal flaw is that if you don't follow -- if she didn't follow your rules -- you have no power to hear this contest. She has no power -- you have no power to ask her to come here. Now you certainly -- if you were sitting as a body to hear like what went wrong with the election process and you wanted to pass new election laws and clean up problems with the election -- you would certainly have the power to call her before you and say, Ms. Von Tobel, you are a candidate in Assembly District 9, you have some information about bad things that went on in polling places. Tell us what they are because we want to fix the law. You have the power to do that.

But the fatal flaw, we're saying, is that she didn't follow your rule, and because you didn't follow your rule, you have no power to take any evidence. You couldn't start an election contest hearing by yourself without a contestant filing a pleading -- excuse me, filing the statement. And we're saying it's as if she never filed a statement because she didn't follow the rules. You said the statement has to contain seven things, and she didn't follow that. And because she didn't, you don't have the power, on your own, to hold a hearing. I understand it's a very legalistic argument and I will certainly defer

to your judgment because you created the law that I'm arguing about. You have the power to change it, and much more so than me, you have the power to interpret. But the fatal flaw is what we call in the law, a jurisdictional prerequisite. And without that, this person, Mrs. Von Tobel, as what we would call the punitive contestant, has no power to come here and offer you any evidence, and has no authority to go forward. And that is the sort of shorthand legal analysis for what we're trying to say.

Close: Madam Chair, but that's law and I don't want the short version.

Spitler: We have one more question, and then I would like for you to proceed with your opening statement. Mrs. Lambert.

Lambert: Thank you, Mr. Chairman. Now, I don't presume to argue with a member of the bar. I'm not an attorney, but Article 4, Section 6 of the Constitution says that each house shall judge the qualifications and election returns of its own members. I don't know who else an Assemblyman-elect or someone contesting an Assembly election would come to. I agree with Ms. Buckley that we have to deal with a better way of doing contest of elections, that there are flaws in current law which is very old. And I don't think even Mr. Price, of all of us, was in the legislature when these were -- [general laughter] but I have some concerns where, where else do you go when these issues have been raised in public? What other forum is there to prove or disprove what has been raised, and clear folks names and that sort of things? So when push comes to shove, maybe we have to go back to the Constitution.

England: Absolutely. And the Constitution of the State of Nevada divvied up power in three different branches of government. And that Constitution gave you the power to determine your own qualifications of the members of your own body. And in doing that, you used that power to pass those two laws that said, we're going to let people contest elections, and if they want to do so they've gotta follow these rules. And that's simply what we're saying. She didn't follow the rules. Therefore, it should not come before you, but we'll proceed in that manner.

Spitler: Thank you, please proceed with your opening remarks.

Well, let me ask you how much longer you need for your opening remarks.

(2550)

England: All we want to do is enter this, our packet of information.

Spitler: We were just thinking of the logistics of a break. Would you like to go ahead and get this introduced and distributed?

England: Yeah, that's fine.

Spitler: Or would you like us to take a break and then --

England: No, we can distribute this and then take a break.

Spitler: Thank you.

England: That's fine. The logistics, Mr. Chair, I just need to know. We prepared this in my office on Sunday morning before we knew what your rules were going to be on who gets Exhibit numbers and who gets Exhibit letters -- this packet of information -- because we are supposed to have Exhibit letters, we would like to mark this entire document -- I have the original here which I'll present to your clerk. We would like -- we're supposed to use letters. I'm sorry, I used numbered tabs. We'll mark the whole thing as our Exhibit A. (This is marked Exhibit E for purposes of this verbatim transcription for the Assembly record.) And within that will be 1, 2, 3, 4 and 5.

The original, you will see in this packet there -- you have just copies of affidavits. The original of every single affidavit is in the original document which I will submit to your clerk (Exhibit E). You're usually able to distinguish those affidavits from the -- as the original by the fact that they're signed with blue ink, so you can tell them apart.

Spitler: Now is your intention then, you would use this when you present --

England: -- our case.

Spitler: -- the case. Okay.

England: At this point in time, I don't -- we were not at that point on Sunday morning readily apprised of the issues that have been brought up here today. If you would like to take a break, I would intend to simply remark about what we intend to do about those, but take no more than five minutes after you come back from your break -- and to explain what's in here, so that you might use it in evaluating some of the evidence that's gonna come in in Mrs. Von Tobel's case in chief.

Spitler: Yes. And I appreciate your remarks of needing time to adequately prepare to respond to issues, and it would be our intent to -- we're in the same situation where we may have to read and process information, because it's been given to us at the same time. So it would not be our intent to not at least allow reasonable time to respond to these things.

England: That's fine. Thank you very much, we appreciate that.

Spitler: Okay, let's all check our clocks and we'll use Joan's time -- Joan what time is it, and what time do you want us back?

Lambert: I have twenty-three minutes to ten. Why don't we call it twenty to ten?

Spitler: Twenty till ten? We will recess until ten a.m.

[Break from 9:40 a.m. to 10:01 a.m.]

Following a roll call with all members present, the meeting was reconvened.
(2689)

Lambert: We will continue with Ms. England's opening remarks.

England: Just as a matter of housekeeping, because I was not familiar with the practice, apparently we are going to mark the Motion to Dismiss as Exhibit A. (Marked as Exhibit C for purposes of these verbatim minutes for the Assembly record.) All right? And then we'll mark our package of documents Exhibit B. I was not aware that we should mark the Motion as an exhibit, and so we needed to do that as a matter of housekeeping, and I'll hopefully try to keep those things straight.

I'd like to just familiarize you with what we intend to do after we have had a chance to review the documentation that Mr. Foley presented in his opening statement, as well as to hear the evidence which apparently they intend to produce to you today.

But in order to assist you, we've decided to give you this packet of materials because I think it may help you orient yourself to some of the issues which you are going to face.

Our Exhibit B is a compilation of information that we thought you might be able to use and I just briefly like to take you through it, because you may find it wise to use it while you're looking -- or hearing -- some of the testimony which apparently is going to be presented to you.

First and foremost, and I'd like to identify for you, which of those documents that are in our package are actually produced by us so that you understand that we produced them, we tell you the source of the information so that you can check out what we are presenting to you and whether or not it's authentic and has the proper foundation and you can rely on it.

Tab number one is a fold-out tab, and that is a chart of every polling place in District 9. The Clark County Election Official Liaison, which is the top Clark County person in charge of that particular polling place.

The next column is the Election Board. These are the people who are hired for the day by the Clark County Department of Elections to act as coordinators and reliefs and recorders. They sit at the table, generally, with the Clark County election officials.

The next column is what the precinct numbers are. We're cross-referenced every precinct for every polling place. The next column is the Election Department daily workers by precinct, and we've broken out every single precinct and told you who these people are and these are the ones that are often nominated by the political parties, and so the Election Department documentation provides -- or tell us, whether they were Democrat or Republican.

And then the last two columns tells us who the campaign -- the poll watchers were for each campaign. The source of the first sets of

columns, the polling place, the election officials, the Election Board members, the precinct members and the precinct workers are all derived from the documentation -- the official documentation -- of the Clark County Election Department. We have the underlying documentation for you, but we thought that it would be easier to see it in this chart form instead of you having to go through pages and pages, and who was that, John C. Fremont School, and who might have seen this, so that's the way we've presented it.

The last two columns which indicate who the poll watchers were for Mrs. Von Tobel and who were the poll watchers for Ms. Giunchigliani, and this time I've said it right, now that my client has given me the phonetic spelling of her name. That information is derived from Ms. Giunchigliani herself, as well as the poll watcher. That's how we found out who their poll watcher was. This is so, as we go through this testimony and you hear information about what happened at what polling place, you'll be able to go back and reference this chart. So this chart is a compilation of the official records of the Clark County Election Department, except for the last two columns and those were created by us. Ms. Giunchigliani, of course, can testify as to who her poll watchers were at each and every one of those polling places.

Affidavit -- or excuse me, tab number 2 is the affidavit of Clark County Election Department Supervisor, Peggy Karmazin, regarding pre-election challenges and voting. This is one of the workers under -- workers -- the supervisor in the Election Department. This is her affidavit verified, as required, by Nevada Revised Statutes, and it sets forth information concerning the pre-election challenges which were filed by a Ms. Elsworth, whom we understand to believe -- believe to be with the Von Tobel campaign -- this is challenging voters in advance, that they don't live at the right place, they're not -- they're voting out of a business, and the like. We asked the Election Department to conduct the search, believing that it would be better to have third parties familiar with the documentation, to conduct the search instead of having our people come and tell you what they think they've figured out, so that's what it is. This is the Election Department conducting a search and telling us of the 117 challenges filed by Ms. Von Tobel before the election. Only four of those challengers voted, and then of those four, only two of them were permitted to vote a full ballot. The other two were only

permitted to vote a limited ballot, which means they only vote in statewide and national elections.

And that's presented -- the original affidavit and all the authentication for the chart and the written challenges have been provided to your clerk, the original affidavit. We also have brought the copies of the 117 challenges, which we received from the Department, and should you care to see those challenges, we'll be happy to present that to you, as well. Mrs. Ferguson is here to explain the challenge process to you. It's probably something you're altogether familiar with anyway, but she's here to tell you how they do it in Clark County and exactly what happened in this particular Assembly District.

Tab number three are the three affidavits from the head Clark County official in each of the polling places where we were led to believe there was some problem. These are each and every one of these people are Clark County employees. They regularly serve as Clark County employees in other areas. They are not Election Department people, but they are the top County official in every single polling place that we believed there to be problems, and we asked them to provide us with this information in affidavit form so we could present it to you here in an authenticated form so you'd have it.

Tab number four has to do with people who are hired by the Election Department to work on a daily basis the day of the election. These affidavits are similar to the ones -- they encompass the same thing as the ones of the officials, but these are just the people that are hired on a daily basis.

Campaign -- excuse me, tab number five are affidavits from two of the Giunchigliani poll watchers and they indicate events that they observed in their particular polling places on the day of the election.

Tab number six is probably the most critical document you will ever see introduced in a hearing. It is a voter who is the substance, we believe, of one of the complaints about favors being given to voters to -- favors being given to voters to induce them to vote for Ms. Giunchigliani, that Mrs. Sedillo was a voter at the polling place at John C. Fremont. She was -- and this is her affidavit behind her. She was accompanied by her deaf and nearly blind, 86 year old mother who was given a piece of candy. She is a blind, and nearly

deaf mother, was not a voter, and she was given a piece of candy which earlier had been delivered on behalf of the Giunchigliani campaign. And she has addressed that issue in her affidavit.

Tab number seven is the -- are the discovery requests. We wanted you to understand what we asked the other side to provide to us because there are no rules about what kind of discovery can and cannot be done before your opening session and before there's subpoena power. We simply used the legal framework that the Rules of Civil Procedure allow, and used those to propound -- what we call propound discovery requests to the other side. And you will see that we asked Ms. Von Tobel to submit to a deposition which as I told you, she would not. We asked her to produce all of her documentation concerning her challenge or contest. She has provided you with her lawyer's refusal to provide us with any discovery. And then we've also provided you with the official request we made at the Clark County Election Department to bring all of their original documents here today, so that you could see the original documents in their original form. And Ms. Ferguson, as being the custodian of those records, of course, can certify to their authenticity.

The last thing we gave you in this tab is the fact that Ms. Von Tobel did, in fact, take depositions as I mentioned. And that her notice of taking depositions -- she has availed herself of due process by taking depositions and preserving testimony, of course, but would not afford us that same courtesy.

Behind tab number eight are the actual registration documents for Ms. Von Tobel herself showing her changes of residency, first into the District and then within the District. The source of that information, as we've indicated in every single one of these submissions, we tell you what the source of the information is and those are the official Clark County Election Department records. They, of course, can be testified to, are authenticated by Ms. Ferguson. And I would encourage you, in each and every instance where any of the parties in this contest provide you with documentation, you ask them where they got it and who created it. I have endeavored in every single instance that when my office created the document, such as the chart which is tab number one, we told you that. We provided you with the information about who created it and what the source of information was, so that should

you question its authenticity or its substantive content, you can go back to the source documents. We have brought all of those source documents with us here today, so that you can look at them.

And item number nine is an affidavit from the paralegals in my office who caused a search. I asked them to undertake a search at the Election Department late Friday afternoon. In the supplement filed by Ms. Von Tobel in an untimely fashion, on November 29, 1994, she identified certain addresses as either not having buildings on them anymore -- therefore, I guess people can't live there anymore -- or they're business addresses. We took her supplement and the addresses that she put in there, and you probably have seen those. There's like pictures of businesses on Western Avenue. We took every single one of those addresses and searched them late Friday afternoon, to see if, in fact, number one was there a registered voter at that address, and number two, if there was a registered voter, did the registered voter vote in this Assembly District 9?

My paralegal who has set forth her credentials here and who is at my direction to be absolutely scrupulous in looking for this information, then produced the chart which is attached to her affidavit. And you'll see that that has every address that Ms. Von Tobel identified as being an address where questionable registration or questionable voters lived. We looked through the precinct registers to find every single registered voter at every single one of those addresses. And then in the precinct register itself it tells you whether or not that registered voter voted. And you will see that we have shown you it for every single one of those addresses, who voted and how did they vote, whether they did a mail-in, or whether they did an early voting, or whether they voted on the day of the election.

And I can tell you of the addresses that they identified -- that she identified in her supplement -- the first 11 addresses, which are the West Baltimores, the West Bostons and the Fairfields, of those 11 addresses, there were only 23 registered voters, and of those 23 registered voters, only 7 voted.

Mrs. Ferguson has brought those precinct registers here today. You can test what we're telling you about exactly who voted and when did they vote. And this is important because we've got to get -- or you've got to get -- up to the number 124 where there is no

difference in the election. Of course, we don't know how these people voted.

Of the addresses that Ms. Von Tobel identified in her precinct -- excuse me, in her supplement to her contest -- there were five business addresses that she's given you the pictures of on Western Avenue in Las Vegas. Of those five addresses, there were five registered voters on November 8, 1994, but only three of them voted.

So that is basically the evidentiary presentation we're able to make at this time. Because of what we've anticipated, quite frankly, would be the argument that we have tried to address every one of the substantive issues in her contest and in her supplement to her Statement of Contest. We want you to understand that the minimum standard that you yourselves have set forth in this contest, is that whether or not the election results would be changed. We cannot ask voters who they voted for, but it would seem in a common sense way that we need to get up to the 124 level. Let me -- and Mrs. Ferguson, of course, is the best person to put this into evidence, but the vote was 3,026 votes for Ms. Giunchigliani, there were 2,903 votes for Ms. Von Tobel. That's a difference, by my calculations, of 123. Therefore, 124 is necessary to really change it.

At the very least, the evidence that you entertain ought to relate to votes, not registration. While registration ultimately leads to voting, the issue really is votes. And the event, or the question is, who voted and did they have a right to vote, and had they not voted, would that have changed the election. And you've gotta have 124 of those to make it change.

All other matters are more appropriately the subject of other bodies. Your very own Elections Committee that would ask was something done wrong or right. Certainly the District Attorney, as improper activity has occurred, and the like. So therefore, we suggest that the question that you be asking yourselves, as you see the evidence introduced both by us and by Mrs. Von Tobel is, does this have anything to do with somebody voting? Number one, if it has something to do with voting, did that person vote for Ms. Giunchigliani, and number three, if those two -- if you answer both of those, yes, then did Ms. Giunchigliani do something to improperly

influence that person to vote for her? That essentially, is the question you're here to ask today, and we have tried to address the issues insofar as we knew what they were.

There is one issue I would like to address, which is what Mr. Foley mentioned first in his opening statement, that he is here today prepared to present to you information that Ms. Giunchigliani specifically violated NRS 293.5235, that she did so twice, that the statute that she voted for, and that she has committed a felony. He did admit that it's not within your province to decide whether anybody has committed a felony. And we would suggest to you that such accusations in this forum are utterly irresponsible. To suggest, when we're here to decide whether or not a contest should be addressed by you and how it should be addressed, that accusing people of committing felonies, which only a jury of their peers can decide, really is irresponsible. It has nothing to do with an election contest and a vote.

But in response to that, because we're not in a court of law but rather in a court of public opinion, we would submit to you that Ms. Giunchigliani has not committed any felonies, that she will offer you an explanation of exactly what it is that happened that day in helping a voter fill out a voter registration form. We have, and which is why this is poised to be up here, a copy of the voter registration form. We'll be happy to provide you with some explanation about that form and why things happen the way they do.

But just to point out to you the absurdity and complete lack of foundation, the issue is whether or not -- as Mr. Foley has pointed out -- under the statute -- you passed the statute in the 1993 Session, which provided that subsection 10, 11 and 12, a violation of those would be a felony. And because it's a criminal statute, of course, has to be very narrowly construed before you can convict someone of such activity.

The issue here is whether or not -- it says, a person who by mail registers to vote pursuant to this section, may be assisted in completing the application. The application must include the mailing address and signature of the person who assisted the applicant. There is no definition of assistance within the statute. There is no definition of assistance within any statute in the State of Nevada, so it is unclear to anyone exactly what this statute means. And what

does assistance mean? We would suggest to you that because you have to strictly construe it, you probably ought to use your common sense. For example, if an elderly woman asks her daughter to fill out the form for her, and the daughter, because the mother has arthritis and is unable or is uncomfortable with writing, if the daughter fills it out and fails to put that assistance sign on the bottom, are we now going to convict that daughter of a felony?

Similarly, in the wisdom of this legislature, you also made it a felony to fail to return the voter registration form within three days, so if a voter, for example, fills out their mail-in registration form and does not mail it in to the Registrar of Voters within three days -- a completion of that application -- then that voter can be brought up on charges -- felony charges. That is an absurd result which I'm sure this legislature did not intend. What you were intending to do was to clean up the process.

So what we're suggesting to you, that Ms. Giunchigliani here will present you with the information, she acknowledges that she knows the people whose voter registration cards are going to be at issue, and she'll provide a complete explanation of what happened on that day and what she understood the statute to mean. And we would ask you to keep that in mind as you assess the evidence which is presented to you, both by our side and by their side.

Thank you very much for the opportunity to address you, and we will be happy to answer any questions that you may have. And if we can provide additional evidence, we would welcome the opportunity to do so.

Lambert: Thank you. Are there any questions of Ms. England? Mr. Price.

Price: Thank you, Madam Chairman. The definition of assistance -- or the lack of definition -- bothers me just a little bit, and I'm -- I didn't participate as much in some of the activities this year as I have in the past, but it's not been uncommon in past years for there to be registration drives in an area, where a team, of generally three people, would go around a neighborhood, knocking on doors, and looking for registered voters, and they would have the registration mail-in there, and would actually give them to people who wanted to register to vote, which at least in my mind, could be construed to be giving assistance.

And if I'm hearing you right now, and I'm not sure if it was true in '91, to be technically correct, the person who was handing out the voter registration documents should, by law, sign it and say, I, Bob Price, or I had kids --? I know when we were doing it in our area, we had young people, probably as young as ten years old, helping, going around the neighborhood. And --

England: Well, Mr. Price, let me answer that question by using the old lawyer attitude, it depends. It's possible, for example, since there is no definition of assist, to say that if someone, if you went to someone's house and they asked you about voting and you said, you know, they do have a mail-in registration. You might call the Registrar of Voters and get one, that that might be assistance. And under the statute, if the voter who is completing the registration form didn't get your name and your signature, then that voter could then be charged with a felony.

Now, this puts a horribly chilling effect on the entire registration process, which I'm sure we didn't mean to include when we passed the law. But just let me show you what that voter registration form looks like. Now this is the mail-in voter -- this is one page of the voter registration form. Ms. Ferguson is here and has the entire form. It is a carbonless form which has some written material at the top and you tear it apart and the voter or someone else, mails in the white part and they get to keep the goldenrod copy, or the yellow copy, themselves. At the top -- and this is a form not created by the Clark County Department of Elections, but by the Secretary of State. When you passed this law in 1993, you told the Secretary of State to promulgate regulations and to make the forms. This is the form our Secretary of State came up with.

Now, in this form which is written in English, I might add, which will become critical in other issues that will be before you -- there are some very straightforward directions to the voter saying, this is what you have to do. And it says, to be registered to vote in Nevada, you must -- now that "you" is referring to the voter. You have to be a citizen, you have to be at least 18 years old, you have to continuously reside in Nevada at least 30 days, in your precinct at least 10 days before, and it goes on. And it says, your application cannot be processed unless it's complete, blah, blah, blah. Then it says, Important, you may not list the business address as your residence unless you absolutely reside there.

All right, and then we go down here, and then down at the bottom of this form we have the voter declaration to all those solemnly swear things, and then at the very bottom is what we're talking about. It says here in item number 12, name, mailing address and signature of person who assisted you with the application. Therefore, the voter who can't fill out the form to begin with, is now supposed to put the assister's name there, and apparently obtain the signature of the assister.

Now one of the reasons we assume, and we looked in the legislative history, and what Ms. Lau had to say about this, was one of the reasons and it is clearly common sense, if for example someone is blind, they are permitted to vote, but they obviously -- this form has not been produced by the Secretary of State in braille. Someone would have to assist a blind voter in filling out this form. And as a -- obviously, as a check and double check, that people are not filling out forms they're not supposed to, particularly where the voter is visually impaired, and is unable to verify the information that the assister has put out. We now have an item number 12 that says that the voter who can't see and can't write, is now supposed to write in the name of the assister in there, and get the assister's signature.

I would suggest to you this form is hopelessly confusing. How is a blind person or a visually impaired person supposed to fill it out? And yet the law that you passed said that if the voter -- the voter who's filling this out doesn't fill it out correctly, they can be charged with a felony. So it's the voter's obligation to fill that out and to secure the signature.

This is a disastrous, I would suggest, consequence to a form that is being used. It is confusing. I'm sure that's not what was intended it to be, but if you look at the form itself and look at the directions, it's the voter's obligation to fill in the name, mailing address, the person --

Lambert: Excuse me. Ms. England? You've pointed out a very real deficiency in our law, but I don't quite know what it has to do with this contest of election. If -- Mr. Anderson has a question. Mr. Price, has your question been answered to your satisfaction?

Price: Yes, thank you very much.

Lambert: Thank you. If Mr. Anderson can pose his question, please.

Anderson: The -- Ms. England, I appreciate your statements about the -- your concern about what the purpose of this document for voter mail-in registration. When -- and having been, once upon a time, a Registrar -- a Deputy Registrar, myself -- I recall the very, very, very, very, very strict instructions that I received as to the proper filling out of the form, and that I would have to do that. In fact, you had to, at that time, sign you were taking "X" number of forms, and they had to be returned in a very strict manner, and you had to account for every form. So I believe that when we adopted this, what we did was we took the existing practice and then the body of the form, and then adopted it to the mail-in.

Clearly, we want it to be readable. Regardless of whether the person is visually impaired or not, rather that the document can be used by people with -- I mean, something other than a scribble, as some handwriting is illegible, as my secretary will be happy to tell you -- the question, I think, is really, regardless --

Lambert: What has this got to do with --

Anderson: Well, somebody's gonna have to -- we've got a document that is traditional. That has nothing to do with whether it's a mail-in or not. The person who fills out the form just signs it to prove that they've done it, that they've participated in this in some way. Whether they do or do not, I don't see whether the document is signed and I signed, has anything to do with it or not. Obviously, a mail-in is done through a different voter registration or mail-in -- has nothing to do with it. It's still the same old form. That's the basic question, is how is this different? It isn't.

England: This form was developed by the Secretary of State. This is a new 19 -- you can see at the bottom, it's adopted by the Secretary, promulgated by her in October of 1993, as a result of what you passed. But to answer your question, Madam Chair, Mr. Foley's opening remarks suggested that Ms. Giunchigliani is guilty of a felony because she may have assisted a voter in filling out a registration form, and failed to sign the bottom of that registration form. The number one affidavit they submitted to you relates to that issue, and has to do with the interpretation of this form and whether or not she violated section 10 of the Nevada Revised Statutes.

Lambert: I think we have to keep in mind that this is an opening statement and there will be ample time to go into this in some depth rather than at possibly inappropriate time of answering a question from Mr. Price was my main concern.

England: Okay.

Lambert: Make sure of the questions in the opening statement, and be able to get into the process of actually examining the evidence from both sides. We only have till Friday, so we do have to keep that in mind at all times. Mr. Perkins, did you have a question?

Perkins: Yes, thank you, Madam Chair. As it stands, we just spent 30 minutes on the form that resulted from, I believe, the opening statement by Mr. Foley about the possible commission of a felony by Ms. Giunchigliani. And as I recognize that the contest is based upon malfeasance of the Election Department, as well as illegal votes, et cetera, et cetera. I don't see where this particular issue changes the voting numbers -- I assume we have to come up to a number of 124 somehow, or at least believe that curve. I don't see where that has any bearing on that issue one way or another. Certainly if a felony is being alleged, that's for another forum -- for a court to decide and that sort of thing.

I'm not an attorney, but I do practice in courts on one side of the law, but what we're doing, it seems to me, is wasting a lot of time talking about a form. Might I request that that particular issue not be addressed from this point forward, if that's not going to be germane to the contest?

Lambert: Mr. Spitler?

Spitler: Thank you, Madam Chair. I think it's imperative that we look at things as they come forward, for this reason. It appears that a great deal of information has been shared at the last minute, and no one has had an opportunity really, to look at it or to assess or analyze what it really means to the big picture.

Obviously, we're here to determine who should, in fact, represent this District. While I think we do need to move along, I think it is important when people say things, that the other side has an opportunity to respond to it. I don't think that it was Ms. England

who brought this issue up. I think she's in a position, however, that she has to respond to it, because there was an allegation that two felonies, in fact, had been committed. I could not remember what the form looked like, to tell you the truth, so while we need to probably move faster, I'm not sure that we should throw things out or not hear them, when they might, in fact, ultimately be the deciding -- the decision maker -- in terms of how we look at all of this.

Lambert: Thanks, and I have to say that I concur with Mr. Spitler on not throwing something out, because the accusations have been made in public, and we should have coherent -- my concern is this is only the opening statement, and this is a questioning pot. And we haven't even got to the point where we're actually putting forth the arguments, and if we could move along to that point, we could probably have a full and fair discussion and do it in a reasonable manner.

England: In Mr. Foley's opening statement he said there were 107 -- 137 bad votes. That's obviously over the number that I've been suggesting to you as the appropriate threshold. I think we could short-circuit this quite quickly if we insisted that we be given a list of those 137 bad votes. That's what we're here to discuss. That's what we'd like to look up, and the documentation that Ms. Ferguson has brought -- last Thursday Ms. Von Tobel went on TV and said she had 170. Apparently, we've now got it winnowed down to 137. That's what we'd like right now. The 137 bad votes that they claim they've got the evidence for, and then I promise you I can short-circuit all of this other information. That's what we're here to look at.

Lambert: Thank you very much. Are there any other questions? No. Thank you.

Mr. Foley, we can start the presentation of your case.

(4055)

Foley: Thank you. I hope you can tell from the length of my opening statement, I'm not intending to be here for any longer than I have to be, and I think we will get right to the heart of the matter here.

I didn't discuss anything regarding the Motion to Dismiss during my opening statement. I want to take no more than 60 seconds to address that issue and then leave it alone.

This section that has the various requirements that have to go into a contest is 293.407. That was enacted in 1960. The very next section in the statute is 293.410. In the first sentence in that statute states, A statement of contest shall not be dismissed by any court for want of form, if the grounds of the contest are alleged to a sufficient certainty to inform the defendant of the charges he is required to meet. You'll recall that Ms. England specifically stated that the one requirement that was met by Ms. Von Tobel was a statement of the grounds.

So again, the language in there refers to a court and not to a Select Committee. But from an overall standpoint, that is the legislation that this body passed. It shouldn't be dismissed. The case upon which everything that Mrs. England was talking about was based, was a 1921 case, obviously many years before this 1960 legislation.

I'd like to call a witness, and I don't know where we're going to put witnesses, or how we're going to proceed.

Lambert: They would testify from the podium you're standing right now.

Foley: Okay. And I presume this will be done through a manner of my questioning and their answering.

Lambert: Frankly, this is a legislative public hearing and we just have witnesses come and testify. We haven't had that format before and we're really not set up for it.

Foley: But you ask questions of witnesses?

Lambert: Yes.

Foley: Excuse me. As I stated before -- and I might point out one other thing. Ms. England and I discussed, it hasn't been quite two weeks ago, that we both wanted to take Kathryn Ferguson's deposition. We agreed upon that and then we're told by -- through the District Attorney's Office that, no, she would not sit for a deposition. I contacted Loren Malkiewich and said, how do we go about getting

a subpoena. He said, you can't, until yesterday when the legislature would convene, but he said, I would certainly encourage you -- Kathryn Ferguson, to sit for a deposition, so that we don't have to do it all up front here.

So I haven't had an opportunity to talk to Kathryn Ferguson, and I would certainly intend to call her as a witness, and ask her certain questions that go to proving our case in this contest. I do not intend to be long-winded. I have my questions written out and they're very direct and to the point for all of my proposed witnesses.

Lambert: I think we should have some committee discussion at this point, because what you're asking for does not fall in line with the format that we have here. If you'll wait one moment while we have some discussion. Ms. Buckley.

Buckley: Thank you, Madam Chairman. When we initially were discussing rules for this committee, I assumed that the lawyers would question all of the witnesses. Although strict rules of evidence are not being followed today, certainly if you want to follow, at least, some loose rules, the other attorney could not object to irrelevant or prejudicial information unless the question was proffered. In discussion, I think with the Co-Chair, they indicated that that would lengthen the time of these proceedings, that they were not accustomed to that format and what they would rather see is each witness come forward, and just indicate what relevant information they have of their own personal knowledge that the results of this election would have been changed if irregularities had not occurred. And certainly, it could also occur by questioning of the attorneys. But those of the Co-Chair felt that since they were not lawyers, and what they really wanted to do was just get to the heart of the matter, each witness would just come up, give us relevant information after being sworn and then questions would be asked if the committee members so chose, and that would be it. That's what I understood the rules of this proceeding would be. Thank you.

Foley: If I might, I think a real quick response to that, and one of the allegations that we have and one of the grounds for a contest, is malfeasance by the Election Board. So under that procedure I ask Kathleen [sic] Ferguson to come up here and discuss her malfeasance. [General laughter] That's not going to happen.

England: Mr. Foley, perhaps, has forgotten, Madam Chair, that in our American society we are innocent until proven guilty. And this is exactly what I'm talking about, is that irresponsible suggestion that clouds the integrity of people before evidence to that effect has been introduced.

It is Mr. Foley's burden to produce information to you, perhaps a modified version of this to assist us -- a modified version is the normal way we attorneys do it, which the committee does not want to do it that way, is to allow each witness to come and testify to whatever is necessary, and then perhaps allow the proffering attorney some additional prompting of -- you know, would you please explain, blah, blah, blah -- and that that would have it go forward. But if something's forgotten, that the witness has forgotten, understandably most people are nervous when they testify and they might forget something, allow the attorneys to just offer, would you give us some more information about it.

Lambert: I think what we need to do is go with the rules that the committee voted upon, that you will present your case, you will ask witnesses to come up, and if you want to whisper to them, it's a free country and we do allow free speech.

Price: If the cameras are rolling, and they can turn up the volume.

Lambert: But what you need to do is present -- if you're talking about malfeasance, tell us what you feel the malfeasance was.

(4330)

Foley: Before I have a witness testify about this --

Lambert: That is the customary procedure we have here in the legislature.

Foley: Okay.

Lambert: And I'm sure if you call someone as a witness and you accuse him of malfeasance, they will tell us a lot about what happened.

Foley: So long as there is some ability to question and zero in. I mean -- and again, I don't -- the allegation is, and that's what's in our contest, that there was malfeasance. And when I say that's what I want to get out of Kathryn Ferguson, I'm not standing here

pounding the table, making wild allegations about her. That's this contest.

Lambert: Mr. Price has a question.

Price: I don't have a question, I have a comment. And to some degree, following up on what I said before. Danny, you come from a long line, a distinguished family of public servants in this state. A lot of attorneys and some people who have been sitting where we're sitting today. And this is not a courtroom, as we have said before. It is a legislative body who is gathering information to make a decision. Now we are not accustomed to, nor do we normally, and I'm sure you know this and if you don't, you could ask some members of your family who have been in these seats, we do not normally harass people or what have you, to bring them before us so that we can make a decision. You know as well as I do that we do not operate with cross-examination by attorneys or even by legislators or otherwise. Now if you have some people who want to come tell their story to us so that we can make a decision and possibly based on what we hear today, even make an improvement on the law, I would suggest that you do it. And even going back to the question by Mr. Perkins, our decisions as individual legislators are made by a lot of things that happen.

(4413)

Now all of us sitting here, and I'm gonna say it for the record, know that there's a lot of players that are involved with what happened -- what's going on here today. What's going on here today started before the election even came around, and I intend to talk about that a little bit later on, but for this body, and the time that we're taking up and that we're providing to you and properly to the citizens of Nevada, let's proceed in a manner that has been going on for 126 years or so.

Foley: If I might, and I'll keep it brief, but the procedure of examining witnesses and cross-examining witnesses was not -- hasn't been going on in this country, as a form of harassment. It's a way of getting at the truth -- [talk over]

Price: Which is what a legislative body does -- and we're not gonna spend a lot of time arguing [talk over] with an attorney about it now.

Lambert: Mr. Price, we want to be polite to our witnesses.

Foley: And this is a relatively unique process before a legislative body. And please bear in mind, this is not passing a bill and gathering all the necessary information to put together a bill for the benefit of the citizens. This is a contest. It's a -- like it or not, it's an adversarial proceeding, by nature. How can a party who has been set over and over and is part of your rules, meet his burden of proof if he can only present evidence from those friendly to him, or those that would be willing to testify on his faith.

Lambert: Mr. Foley, I repeat again, if you can state your case, all of the allegations that you wish to make, I am sure that the people that you consider unfriendly, would want to come up and say, under oath, what they -- anything you -- probably more than you want to hear. I'm sure that if I were accused of things I would be very, very complete in my testimony, when I had an opportunity to come up. We are operating under the rules that were voted on by this committee that it's something we're required to do, and so you must present your case in that format. Those rules were sent to you prior to our hearing, and so I would ask you to please state the reasons that you believe the election should be overturned, if you could.

Foley: And I'll proceed with the witnesses. And as a matter of clarification, if I -- I guess what I'll do is set forth that I'm going to call this witness and what I'd like that witness to specifically address, and then let that witness do so. And if I might, since a witness may be adversarial, would it be within the rules, or would it be the rule of this committee, that that witness simply address the questions I've raised. If that witness wants to discuss something during the opposition's presentation, do so. Or are we going to just -- soon as this witness comes up -- for instance, I wanted to call Chris Giunchigliani as a witness, and have her explain a number of things. She'll have an opportunity to in her own presentation to give justification and lengthy explanations, and so forth. But maybe we should clarify that first.

Lambert: I just have one comment, and Mr. Spitler would like to add something. If you will state your case, I'm sure questions will arise in the minds of the committee.

Foley: Okay.

Lambert: If we understand what evidence we're trying to get at and what we want to bring forward, that should not be a problem. Mr. Spitler.

Spitler: You made my statement.

Lambert: Okay.

Foley: Okay.

Lambert: Mr. Anderson.

Anderson: I just want to make sure that we clarify for both Mr. Foley, that he's not under the impression -- inquiring minds want to know, and this is a group of people with inquiring minds. It's much different than the system that you're operating under, and I'm sure that's what Mr. Price's point is. In fact, anybody that appears in front of us, we'll ask any question that we want. And even though you may want to direct the testimony to only support yours, I know that some of these people want to ask other kinds of questions too.

Foley: I can see that, and I apologize. I'll present it that way, and, as you say, Mr. Anderson, the questions will come from the panel.

Anderson: Okay.

Foley: Witnesses I'm going to call is Chris Giunchigliani first, and the areas of inquiry or discussion that I'd like to hear, like her to respond to are her knowledge of -- personal knowledge of -- these three individuals who assisted in the filling out the mail-in voter registration applications of the three non-citizens, those being Ted Pappageorge, Judith DeZarn and Chris Walker. And specifically, what, if any, discussion she had had with those individuals or anybody else, really, in her campaign regarding these mail-in registrations, and what, if someone is going to be registering somebody, what they needed to do with these forms. Was the issue of citizenship discussed, was the issue of --

Lambert: Excuse me, [talk over] Mr. Foley.

Foley: Yes.

Lambert: If you could -- I think it would be simpler, something more we're used to -- you want something to come out.

Foley: Yes.

Lambert: You want to bring something out. If you could say what it is, and then you can call Ms. Giunchigliani, but the committee will have some idea of what we're trying to get at. But this is rather confusing, so if you could just state the problems that you feel contribute to the overturn of the election, and then you can call Ms. Giunchigliani and we can deal with it from there. But at this point the committee has no idea where you're going. Mr. Spitler.

Spitler: Thank you, Madam Chairwoman. Am I to understand that you don't have a case unless you bring someone forward today?

Foley: Unless you'd want me to just simply testify about everything I've heard from somebody else, or what people have told me -- other witnesses have told me these documents are and their investigation. I mean I could stand here and recite it, but I wanted to proceed with some first-hand knowledge of actually --

Spitler: But somewhere in terms of coming here before this body today, you have determined that a race has been won inaccurately. Do you have a set of data that supports your premise with you today to share with this body? And I ask that because it's important that that be your case before this committee, so that we, then, can ask questions either of you for clarification, why do you think that a hundred and --

From the audience: One hundred and thirty-seven.

Spitler: One thirty-seven. That these votes cast were, in fact, inaccurate. My anticipation is that you would present that. Then the attorneys for Ms. Giunchigliani could then rebut in some way. That's how the committee has actually been set up. So my question is: Do you, in fact, have a case ready to be delivered to this committee?

Foley: Yes sir.

Spitler: Could you proceed?

Foley: Well, let me do that. In fact -- maybe it's -- my usual experience --

Lambert: Our process is simpler than maybe you're used to, but it shouldn't be a real problem.

Foley: But you've enacted a rule that said, do an opening statement, so I proceeded like I ordinarily do, and then do a presentation of case. This is kind of -- at least from my experience, and maybe some of the lawyers on the board would appreciate it -- now it sounds like I'm making a kind of a combined opening statement, closing arguments, and I'll sit down and let the witnesses come up and be examined to show exactly what I'm doing, or what the evidence is to prove what I've said, as opposed to just a kind of a guideline opening statement, and then bring the witnesses up one after another.

I'll proceed. I'll proceed, and we'll just -- we'll start with the folder of documents, and two-fold issues regarding registration. The first document is an affidavit of Gertrude Taves that just very simply says that it was at her request, Chris Giunchigliani filled out all of the information on both her's and her husband's mail-in registration affidavit, which are the second two documents, save and except for the signature.

The pertinent issue here is, of course, the box number 12, and the fact that that is not filled in at all. The next document, which has a tab on it, is the mail-in voter registration of Nga Hunnh. That's the way that's presented -- I mean that's the way that's said. And on the bottom of that is a signature and address of Mr. Ted Pappageorge. I have attached a copy of Mr. Pappageorge's business card which he provided to me when he told me -- on the back of that was his attorney's -- not his, but the Culinary attorney's name and phone number.

That next page is an hourly posting log obtained from precinct number 11, and about two-thirds of the way down in the left-hand column -- is that it -- yeah, it shows that Nga Hunnh did vote. I spoke with Nga a week ago Sunday. Present was her husband who spoke much better English than she did. She did speak some English. Her exact level of comprehension -- my questions -- I couldn't possibly testify to, but it appeared that we communicated in some sense, and then she'd talk to her husband and he would

communicate back to me. She also talked with Kathy Von Tobel and Mike Epling, and what she told me, anyway, and what I believe she told these other two witnesses, was that Judith DeZarn is a union representative at the hotel where Nga works. I believe that's the Sahara Hotel. Oh no, excuse me, it's Ted Pappageorge is the union representative at the Sahara, and that is a fact. That's where I met Mr. Pappageorge.

Ms. Hunnh stated that she told Mr. Pappageorge she was not a U.S. citizen and he insisted that she sign the mail-in voter registration application. She did so. Now, in communicating that to me, she obviously recognized prior to the time that she signed this, that she could not vote. Or was not supposed to be voting. That's why she insisted to him that she wasn't a citizen. I contend that rather than face or turn down a request from the Culinary Union organizer at her hotel, she went ahead and signed the voter registration application, knowing full well that she was not entitled to do so. She, in fact, voted. She told me she voted for Chris Giunchigliani. I didn't have her under oath, I wanted to take her deposition, and we had scheduled it for approximately 11:00 o'clock on Monday morning. Mike Epling and Kathy Von Tobel went over to get her -- I talked to her about that on Sunday and said, will you come give us a written statement? And then, as of Monday, she wasn't going to do it.

Now, I can't say I blame her. Giving a sworn statement that she's committed a felony would not be in anyone's best interest, so I didn't, as represented before, drag her in to my office, or attempt to drag her in -- I didn't drag anybody into my office.

She also said that -- this she said to me -- that she had told Mr. Pappageorge that she didn't like the Democrats and she wanted to be a Republican, and he said, Democrat. And that's how she registered.

Again, I didn't have a court certified interpreter with me at the time. I believe firmly that that's what she was understanding my questions to be and that she was giving the answers; but I don't speak Vietnamese or any language other than English, and that's -- that was what I understood from her and from her husband, Doug.

Lambert: There are a couple of questions on that point. Would this be appropriate to interrupt you right now with those questions?

Foley: Sure.

Lambert: Thank you. Mr. Spitler.

Spitler: Thank you, Madam Chairwoman. How did the Gertrude -- is it Taves?

Foley: Taves.

Spitler: Taves. How did she come to the attention of you or your client?

Foley: Kathy Von Tobel was out walking the District after the election, as part of this investigation. Gertrude is the apartment manager at the New York Apartments. Kathy was checking with her on a couple of other registrations that appeared to be bad, and she had given her some information about how this person moved out some time ago, or this person still lived there. I don't recall exactly. And from there, the conversation with Gertrude was that the way she went about becoming registered to vote. She told her that Chris had come by during the campaign --

Spitler: What's her party affiliation?

Foley: It's Democrat on the -- both she and her husband, pursuant to that form.

Spitler: Okay. My next question then was for Kieu Hunnh Nga. You indicated that in discussion with the person who assisted her in registration that she said she wanted to be a Republican.

Foley: No. The person who assisted her, Ted Pappageorge, didn't talk to me at all, other than to say, you need to talk to Richard McCracken. In talking to Nga and her husband, they are the ones that volunteered -- that -- you know, we said we're tired of Democrats, we want to be a Republican.

Spitler: Yeah. I would just venture to say that if -- and then you're saying well, the person just would do what anyone told them to do. Wouldn't it seem clear that someone who wanted to be a Republican could go to any registrar? As a matter of fact, a new desire to register, you'd run out and register. Why would this person who

wanted to become aligned with a political party wait until approached by someone at work to say, you register as a Democrat.

Foley: I doubt she even cared to register, period. I don't think registration -- registering to vote was anywhere on her mind.

Spitler: So the comment -- or the hearsay comment that she wanted to be a Republican was just casual conversation.

Foley: Well, it was in the process of her being registered, and her telling the individual, I'm not a citizen. He said, go ahead and do it anyway. Well, I want to be a Republican. No, you're going to be a Democrat. So, the point being to answer your question, I don't think she was -- before being presented with the mail-in registration form, I don't think she had thought about registering to vote, and probably after signing it, I don't think she thought about going ahead and changing party affiliations.

Spitler: Okay. And was she also someone that you came in knowledge of as a result of walking the district?

Foley: No, she was someone that in reviewing recent mail-in registrations, because there were numerous last-minute mail-in registrations -- you'll see hers was October 4th of '94 was when it was received, and I think the closing date was the 8th. That given that we saw her age and place of birth, Vietnam, we followed it on.

Spitler: Okay. Thank you.

Lambert: Mr. Perkins -- oh excuse me, Mr. Price had a question. Mr. Price.

Price: Oh, thank you, Madam Chairman. We appreciate you didn't drag them in -- it was just a characterization, right? I was looking -- however, it was indicated that -- well all of these folks, I guess -- but anyway, Mr. Solano [stumbles over pronunciation] did not speak or write English? Do you have any idea if that was accurate?

Foley: I talked to him.

Price: Through your interpreter.

Foley: No. I talked to him -- his English was not good.

Price: But you could --

Foley: Yeah, we -- I had no doubt -- I'll say this for my conversation with him, that he was not a citizen.

Price: 'Cause he spoke bad English?

Foley: No, because he told me.

Price: Oh, okay. Well, you know, I always like to remember -- and some of you may or may not realize -- we have some second or third generation Basque people in Nevada that were born here and still their primary language is Basque or Spanish, or whatever that is. They can barely speak English, some of the older folks that are here. So just being -- not speaking good English is not necessarily a sign of not being a citizen. So he actually wrote this?

Foley: Pardon me?

Price: He actually wrote this statement that is signed.

Foley: No, he did not write that.

Price: Oh. Okay.

Foley: That is not his handwriting.

Price: Whose is it, could you tell me? Or do you know who did?

Foley: Yes, I do. A gentleman by the name of Keith Lineam.

Price: Oh, I know Keith. He's a media star.

Foley: Whether Mr. Cortez can read English or not, I don't know. We convened at my office last Friday -- Ms. England and myself -- as she pointed out -- to depose Jose Cortez Solano. And Ms. England pointed out to him -- and he had Hector, a friend of his who seemed to speak good English, or was able, at least, to communicate with Jose and us -- and Ms. England could properly so, communicated to Hector to communicate to Jose that he may need an attorney on this. And I acknowledge that's exactly right. When someone tells him that and then five minutes of conversation back and forth and

it appeared to me, anyway, that once it was pointed out on the bottom of his form, that he'd have to be a citizen and if you give false information it's a felony and a civil penalty up to \$20,000, I think he said, oh, my God. --

England: Actually, if you remember, Mr. Foley, he said, no way, Jose.

[General laughter]

Those were the only English words the man spoke.

Lambert: Excuse me. We try to have one person testify at a time.

Foley: He did say, no way Jose. I recall him saying, oh, my God, and at that point his companion stated that no, he would prefer not to go through with a sworn statement at this point in time. And we said, fine, you're free to leave. Given that we didn't drag you in here, we're not going to chain you to the chair, either.

Price: The a --

Lambert: Second question?

(5430)

Price: I do have another question, yes. And more -- since as was discussed here before, we're not in a court, but we're a legislative body looking through all of our own means of trying to reach answers, and so forth. You know, and I would presume, but I do want to ask on the record, you would have no objection whatsoever if we were to attempt to contact any of these citizens -- or people. We don't know if they're citizens or not, but folks, ourselves, to try and get this story right.

Foley: I would do everything I could possibly do to assist --

Price: Okay, thank you so very much.

Foley: -- in having that contact made. In fact, I know for a fact that that's not Nga Hunnh's current address. I think it is her current telephone number.

Price: Thank you.

Lambert: Thank you. Mr. Perkins has a question.

Perkins: Thank you, Madam Chairman. Do you know how Ms. Nga made it to the polls?

Foley: She walked. She lived -- you know --

Perkins: Okay. The reason I asked the question, you said that she, through whatever means of communication that you had, you understood that she did not want to register because she knew she wasn't a citizen. So she walked, on her own volition to the polls, that would seem to be contradictory to that.

Foley: Well, I didn't say she walked on her own volition to the polls. She lived --

Perkins: Did somebody force her to walk to the polls?

Foley: Well, I don't know. I don't know. Again, we didn't get a sworn statement, or weren't able to get a deposition of Nga's. I just know that she lives at approximately 10th and Ogden and voted at the Las Vegas Academy, which is just a couple of blocks away.

Perkins: The other thing that you said is that through your conversation -- through your communication with these people, that she stated in some manner that she didn't want to be a Democrat, she was tired of the Democrats and wanted to be a Republican. But you also said that she told you that she voted for the Democratic candidate in that contest.

Foley: Yes.

Perkins: Okay. Thank you.

Lambert: Thank you. Mr. Spitler.

Spitler: Thank you, Madam Chair. I want to go back and ask one more question that links up with a question I've asked before, but I want to make sure in my mind it's very clear. And that's that as these things were uncovered, at no time you took a legal remedy to file

with the District Attorney. Is that correct? No issue that you've uncovered thus far has been filed with the District Attorney?

Foley: It's all been given to the FBI.

Spitler: Okay. Had it been filed with the District Attorney and they chose to prosecute, you would have had the opportunity for all of the depositions, the subpoenas and the full kind of administrative hearing that you're talking about here. Is that correct? I'm not an attorney so --

Foley: Not before this committee was formed.

Spitler: But you're --

Foley: But my -- I don't do much criminal work, but that doesn't happen overnight. And, as with the FBI investigation, when we've taken something back to the FBI and said, here's something else we found, what's going on? They say, we cannot confirm or deny that anything's going on.

Spitler: Could it have been filed both places -- with the District Attorney's Office and with knowledge of the FBI?

Foley: I'm sure there was nothing that would prevent us from filing something with the District Attorney's Office.

Spitler: Okay. So from the very beginning, the intention for this was to come here, was not to clear up any illegal acts that took place that can be prosecuted early on, but to bring all of that information here, and to bring it really to not a court of law, but to a hearing process.

Foley: Except for taking it to the FBI.

Spitler: Okay.

Foley: I mean that's what that is. The intention -- I'm not -- we're not seeking felony convictions of anybody. That is not within our province. When things were found out like this, that seemed to show that there was an obvious felony committed, it was turned over to the authority that I deemed most appropriate --

Spitler: Okay, thank you.

Foley: -- since it involved a mail-in registration that happened immediately prior to an election which included federal officers, we decided to go to the FBI. What they do with it -- rightfully so, it's none of our business. Thanks for the information. If you have any more, send it to us. But, they're not going to give us status and dates, and I don't think anybody'll be -- I'm sure nobody's been deposed. I don't know that. Maybe someone has been interviewed by someone from the FBI, but I have no idea.

Lambert: Ms. Tiffany.

Tiffany: Thank you, Madam Chairman. It looks like you've got all kinds of activities going on here of perhaps coercion, perhaps felonies, perhaps Chris filling out a form incorrectly, and unless I don't see it here, I'm looking for three or four people, where they voted, and maybe they shouldn't. Can you tell me here, where those three or four people actually voted, other than the one Vietnamese lady?

Foley: Jose Cortez Solano did not vote, as I stated in my opening statement.

Tiffany: Okay.

Foley: Alex Kanaan did vote. I don't have a formal record showing that. I would have a witness that would testify that they reviewed the registers and saw that Alex voted on the day of the election. Alex is someone I have not talked to, nor did any of us have specifically talked to, we tried but just haven't been able to get ahold of him.

Tiffany: So out of these four, we only have one where you could copy a voter registration -- or copy the book when she actually signed in and voted.

Foley: Well, I think we could have copied Alex's, but I don't have it.

Tiffany: Okay. 'Cause what I'm trying to do here is tally up what hopefully won't take forever, to the 137, and out of these four I can count one for sure.

Foley: That's right.

Tiffany: Thank you.

Lambert: Ms. Tiffany, I believe that the Voter Registrar in Clark County brought all of the precinct registers here today, so you probably --

Tiffany: Might want to check for four or two or --

Lambert: -- at some point.

Tiffany: -- or what we have there.

Lambert: Ms. Buckley. Excuse me, Ms. Buckley has a question, first.

Buckley: Thank you, Madam Chair. I just want to echo Assemblywoman Tiffany's point. What I'd like to do is keep on focus and to tally the number of votes that would have changed the election. And so far, we have one. What would be most helpful to me, and I appreciate that this is being operated under a different style -- being a lawyer, I, too, am more comfortable, at least at this point, with the style you're familiar with, but at this point, I think it would be most helpful if we could be directed and have a list of those votes that should not have been cast, and what evidence you have that those votes are, in fact, illegal. Thank you.

Lambert: Mr. Anderson.

Anderson: I want to come back to Ms. -- Mr. Foley --

Foley: Excuse me, I'm sorry.

Anderson: The Vietnamese lady -- did you -- is her husband a U.S. citizen?

Foley: He was Vietnamese. I don't know if he's --

Anderson: The reason I ask is that she might have citizenship via being married to a U.S. citizen.

Foley: I don't know. She has a green card, and told us she is not a U.S. citizen. And she said --

Anderson: In her mind, she's not a U.S. citizen.

Foley: Pardon me?

Anderson: In her mind, she is not a U.S. citizen.

Foley: Well, and she had said she was going through the process and thought -- and this is something that was difficult for me to understand what she was saying, but she thought she was going to be sworn in in December, but now, she went to the federal building and they said, no, we'll do it next time. So, she was talking about being in the process of becoming a U.S. citizen.

Lambert: If I might interject at this time. Just some information. It's twenty after 11:00 and we go into Session at noon. So, we're gonna have to break for noon. The Co-Chair and I have discussed that because you've had a change in what you thought was the format, and because Ms. England and Ms. Giunchigliani have not seen a lot of the things that you presented today, to give them more time to look at it, to give you time to prepare for your change in format, we'll reconvene at 2:00. And with the committee's indulgence, that we might get through it as much of what Mr. Foley wanted to present now, before we break, and then you'll have the opportunity when we come back at 2:00 to put it in a -- maybe a format that fits this hearing better. Does the committee have any objection to try and proceed as quickly as we can, at this point?

[General conversation]

If you could go forward with what you want to present -- not that you have to hurry, I was just -- as you can see, we're not sure about asking questions.

Foley: No, no, you're not; and I'm moving right along and I'll get to the next one when the questions stop. So.

Lambert: We're the ones that are holding up the proceedings. We understand that.

Foley: I'm not going to discuss that document which is in there -- has a tab of Exhibit C on it. The next page is a one-page, handwritten document that Kathy Von Tobel received from the Election Department when she was first told that the Election Department about Culinary members having bused a number of members in for

early voting, which is, again, not a problem, the fact that they're being bused in. But that once the voting started -- and for purposes of early voting, the polling -- or the polling -- the polling place is the Election Department and there's specific statutes regarding that. That the same requirements must be met as if inside a polling place, and the Department of Elections has given and suggested that they rope off and they measure off the distances where campaigning has to stop. Kathy Von Tobel was told, and this list was put together for her, out of her precinct. These are the people that got off the bus that day and voted in her district. The first number there on the bottom, Total of Voters 1,014. That was, to my understanding, is the total number of early voters. The slash 66 is the number of voters in her district that voted that day.

England: Madam Chair?

Foley: I don't --

Lambert: I'm sorry, we do one witness at a time.

England: Just a question of clarification. I don't have this document and I -- or what are we -- it's not in my numbers -- or I don't know, quite frankly, where we are. I apologize, but I --

Foley: Well, it's not a perfectly assembled book, by all means, and maybe I'll do this --

Lambert: It's one page, right after C, and it looks like -- you can see it there. Do you have it now?

England: I do have it. Can we give it a letter --

Lambert: I think we have to have numbers on that side. This will be C1.

Spitler: Madam Chair, I do have a question. Is this not an exhibit, the whole book?

Foley: That's my -- that's what I'd like to do. We hadn't discussed that again --

Spitler: Okay. This would then be Exhibit A?

Foley: One.

Spitler: One. Okay. So the whole document tabbed B, C, down through these various things -- this is all one exhibit.

Foley: Yes sir.

Spitler: Okay. So we wouldn't need to do it --

Lambert: Right. Thank you. If you could proceed. Sorry for the interruption.

Foley: Okay. This document was written out and prepared by a woman named Peggy at the Election Department. It was not Kathryn Ferguson. But -- oh, Peggy Karmazin is that the -- okay.

And the reason this was prepared was because in obtaining walk lists and wanting copies of various registrations during the process of this investigation, Kathy Von Tobel had discussions with Kathryn Ferguson, and the discussion came up that at the time of this early voting the Culinary, instead of just staying at the bus, or opening the door, a number of the members actually followed the voters in and did so much as stand proximately behind them, and talked to them while they were punching the ballots. They were also --

Lambert: Could they see them vote?

Foley: They were -- as much as -- I don't -- I don't know. Again, I wasn't able to take Kathy Ferguson's deposition. This was what was related by Kathy Ferguson -- Kathy Ferguson to Kathy Von Tobel. And as a result of all of it, Kathy Ferguson said to Kathy Von Tobel, you know, at some point in time I had to remove some of these people because it was just getting out of control.

Lambert: Mr. Price, you --

Price: I might be able to answer that or at least paint a verbal picture. I voted for the early voting thing, even though I didn't think I was gonna like it, and I have to say now, I loved it. I voted on the first day of each early voting. But, they had --

[General laughter]

Well, let me rephrase that. The first day of the primary and the first day of the general. But they -- they had an area back in the back of the building -- you walked in the front door and you had to go down a series of hallways and go back, and they had a series of portable voting machines along the wall back there. And I would describe the area as pretty well confined, but the machines were against the wall and they had several poll workers -- folks working for the Election Department -- there, and as the machine -- these machines are portable, they're up, but they have wings on the side when they open out and everything, and it would be very difficult -- it would certainly have to be obvious, for someone to be looking over your shoulder to the extent that they could tell who you were voting for, because you slide this card in there, you're in a little confined thing there. But they had folks who worked for the Election Department and as the machine became available, they would indicate, you know, come over here and so forth. And so I think it would -- or at least in the opinion of myself, who was there -- I think it would be pretty hard to have someone there who was demanding, or whatever, that a person vote in a certain manner. I think it would be even harder for them to tell how a person voted, even though the proximity was close.

Lambert: Thank you. Mr. Foley.

Foley: Noting that the -- there are specific statutes that provide what is to be done at the Election Department during early voting of the testimony of Kathy Von Tobel, will be as I just stated, and again, this document was not prepared by her. This was prepared by someone at the Election Department that -- Mr. Spittler might ask, how did this thing evolve. I think I've explained that, that it was discussing something else, and somebody from the Election Department raised this issue to Kathy Von Tobel. This was nothing that she had heard from someone else, that there were improprieties or irregularities during early voting. This was something that the Election Department noted. There's also been a quote by a Mary Moore, from the Election Department in the Review Journal that -- where I guess this allegation's been denied that they ever told Kathy Von Tobel this -- but she did say that there was campaign literature present inside what she defined as the polling place that day -- on the day of the election. That's 66 votes. I don't have -- we weren't given -- the names of these people that voted. I don't know -- as I've said before -- who they voted for.

Lambert: There's -- stand in line Mr. Co-Chair.

Spitler: I'll back off.

Lambert: Mr. Hettrick, did you have a question?

Hettrick: I guess I would just make a comment. I think, in fairness -- I don't think any party would -- or any group -- would haul a group of voters to a poll -- or a polling place -- without having a pretty good idea how they were going to vote. I'm sure -- as the Republican party sure wouldn't do that, and I don't think the Democrats would either. You know, I don't think any independent party would either. I think, in reality here, I don't doubt that they couldn't see over their shoulder or anything else, but I doubt that you'd drive a bus up and down the street and suggest that everybody that's going to vote for somebody you oppose get on it and you haul them to the polls. So I just want to point out that I think, you know, reality has to bear on all of what we hear here and it is open to discussion. We can't prove how any one of these people voted. I guess that's my only comment. I just wanted to make a comment. Thank you Madam Chair.

Foley: One of the issues -- if I might just address that -- I mean, there's the sanctity of the voting booth. You can walk down the street to the precinct where you're going to vote and see friends and relatives who say, hey, I hope you're gonna vote for so and so. I hope you're gonna vote for so and so. And that's all well and fine, but the minute you step into the voting booth, you make up your own mind at that point and time. And you don't have to tell anybody when you walk out and they say, did you vote for so and so. And you can say, hey, hey, yeah, and I'm hopin' the guy wins, or, mind your own business. But when you're standing there, one of the constitutional guarantees is that you're free from any influence. And this is something that's developed over a couple hundred years in the United States. And having somebody at your back, whether you think they can actually see which hole you're punching -- I mean, half the time when you're standing there you're not sure exactly which hole you're punching. You have to take a couple of shots. So I'm not gonna say that somebody within this many feet or that many feet can say, oh, he's voting for so and so. But if you feel their breath on the back of your neck, the whole system's been violated. It's a very, very serious situation that would never happen -- I would

hope it never happen -- at a normal polling place, that anybody would be able to walk past that registration table with the voter and follow them any distance towards the place where they were going to vote.

Lambert: Ms. Buckley.

Buckley: Thank you, Madam Chair. Mr. Foley, do you have any witnesses who will testify that Culinary Union workers followed 66 people into the voting box, thereby intimidating them such that the election would have changed?

Foley: This was a representation made by Kathryn Ferguson to Kathy Von Tobel. A representation which I think was made -- and Kathy will talk about this -- at the beginning of this investigation there was plenty of cooperation with the Election Department. It's all public record. Sure, we'll tell you anything we want. I think what happened is after some of this stuff got said, some of the Election Department realized, oh, my God, it all happened under our nose, and the relationship became very tense, and there wasn't anything communicated out of the Election Department. This was a representation by Kathryn Ferguson to Kathy Von Tobel that's supported, by this handwritten list. Why was this list made up by someone at the Election Department if there was nothing behind it? It's a representation that when it's made by Kathryn Ferguson -- in fact, she's indicting herself -- admitting that things got out of control under her nose. That is the evidence that I have. So I don't have -- and I don't know what the individuals from the Election Department are going to testify to as to what happened that day, and I don't have anyone from the Culinary that's coming forward today to say we intimidated 'em.

Lambert: Ms. Tiffany.

Tiffany: Thank you, Madam Chairman. I'll have to say my first comment is I'm green with envy that there's such an organization of recruitment of voters. I think that's pretty admirable. I wish I had that kind of an organization, and I consider myself as with a fairly good grass roots organization.

Foley: Proceed cautiously.

Tiffany: Yeah. And also, with early voting -- you know, this looks to me like it's certainly an opportunity to know at any given time by having this kind of organization. You could almost count day-by-day how many votes you have and how many more left you have to do. And if you have a telephone recruitment -- campaign -- going on along with it, with the walking, you could keep a day-to-day track of how many votes you've got. Like I say, I think that's enviable. I'd love to have an organization like that.

What I'm gonna look at these 66 votes for though, is whether there was coercion or questionable practice or outside influence or if there was any intimidation. So I can't fault the organization. I would love to have it. But I really will have to say I'm going to have to look at those 66 under those terms.

Foley: Absolutely. Absolutely. And I think some good questions, which I have written down, but I wanted to ask, that you might bear in mind, is I know there's the union representatives present here today. I intended to call one of them to the stand, if you will, and ask them how they picked these people up. Were these people that voluntarily came down to the union hall after being given a telephone call or were they picked up as their shift ended at the hotel? I don't know. That's not information that's been shared with me, but I think that's a very fertile area of inquiry for a panel like this.

And again, bearing in mind that you have with these first three affidavits, people that apparently are more willing to commit a felony than they are to say no to their own union organizer. And I don't mean to indict any group. I think it's a very fertile ground for investigation, and I think what we've presented thus far shows many violations.

Lambert: Mr. Sandoval.

Sandoval: Thank you Madam Chair. Mr. Foley, I just want to confirm that these 66 votes that you've described in C1 are part of your 137.

Foley: Yes.

Sandoval: Thank you.

Foley:

The other area of votes -- and I don't have any document in my package to support this, but I understand we'll get that from Kathryn Ferguson -- are the felons that actually voted. That was one of the things we wanted to discuss in depositions that we weren't able to take, and we had asked for the list and the information back was that was privileged to some extent so it could not be made public to us. So I don't have the names of those felons, and the last thing I saw in the newspaper was there was -- the list had been dwindled down to 29, and it started out like, I think, 40, and dwindled down to 29 in this district, and they were still looking at four more. So it was somewhere between 25 and 29.

Again, the issue there, in addition to votes, and I would like to point this out, under 293.410, sub 2, "An election may be contested upon any of the following grounds: (a) The Election Board or any member thereof was guilty of malfeasance." You get down to (c) which says that illegal votes were cast and counted for the defendant, which if taken from him will reduce the number of his legal votes below the number necessary to elect him. Those are two completely separate and distinct grounds. In the first ground, regarding malfeasance, requires no proof of who anybody voted for. It's malfeasance. And I contend to you that as a result of malfeasance, a number of illegal votes were cast, that number which exceeds the margin of difference between the two candidates, that you've got a malfeasance which very well could have affected the outcome and should be more than adequate malfeasance for a contest under 293.410 (2)(a).

Why weren't felons purged from the voter registration list? That's the burning question I had for Kathryn Ferguson. It should be done. It's the law. And they've got more than just election day to do it. It's being done now, is my understanding.

The next evidence that I have, and I can, I think, talk about it. It's the rest of what we have in the book. Our questionable -- and we've done investigation on it and confirmed and both Kathy Von Tobel and Mike Epling, who did the field investigation on this will testify to it. These are people who voted, only people that voted. We've taken out -- there were dozens more of registrations that we found where nobody lived there and Kathy did an investigation, and turned that over before the election and took care of some of those. Throughout the course of her investigation she ran across numerous, numerous bad registrations, but since they didn't vote we're not going to

bother with it. And what I've done -- the numbers there in your book, 5, 11, 21, 31, 40, 92 and 2, are the precincts in District 9 where problems were found with respect to registration. The registration problems vary from commercial residences to non-existent residences -- commercial residences, excuse me. Commercial addresses that are clearly not residential, to non-existent ones, to ones where, through the investigation discussions were had with the apartment or property managers that said, this person hasn't lived here in a lengthy period of time. I've further broken these down. When you take a look at -- if you just -- if you look at the precinct, Las Vegas 5, the first two pages there -- Las Vegas 5 is the first one and there's two names on it in Las Vegas 5, and I've put inconclusive. This is -- these are documents that we've typed up. I've separated the number of bad registrations that I'm submitting to this board is 42. And that is people on the first page of these sections, not the inconclusive. The distinctions I've made with inconclusive, I think, provides a good example of it on this Las Vegas 5. At the time that our investigation was done, for instance, Barry Sugar at 600 Bonanza Road, we were told he moved three to four months ago. So he moved prior to the close of registration. If someone -- by law in Nevada -- if somebody moves after the close of registration, but before the date of the election, their registration is not invalid, they can still vote. Same thing on the second one there, Vithoukias. He moved a year prior. On the inconclusive page all we were told was that he had moved before November 1 and that's all the information we had. So I've separated those two, and, for instance, Mr. William Jack is not included in our list of 42.

Lambert: Mr. Close has a question.

Close: Thank you, Madam Chairman. In reference to your inconclusives, then, were they included in your 137?

Foley: No.

Close: They were not?

Foley: They're not.

Close: Okay. So the 137 are conclusive ones? Do you have them done -- or divided by party, Democrat or Republican?

Foley: And again -- well what we have here, as additional support to show that they voted, and I've got their registrations which do show party affiliation. It's the next page. If you'll turn past the Las Vegas 5 inconclusive, I have the register page that shows where William Jack, the first one on the page, did, in fact, vote, and then the next page shows where Mr. Jack's name on the walk list that we obtained, which is the same information that's on the affidavit. His, for instance, shows he was a Republican.

Close: Oh, I can walk it through and add them up, also, but you have not done that as far as totals, at all?

Foley: Republican versus Democrat? No, I've not.

Close: Thank you.

Foley: Yes, we thought about that and I might have voted that down as trying to make a too big of a deal over Republican versus Democrat

TAPE 2 - SIDE A

being a fourth generation Nevadan Democrat myself. I hate to characterize anybody as a democrat, having voted for Democrats -- And that is then consistent all the way through the documents that we provided and have broken down by precinct. And you'll note in the last one, Precinct No. 2, those are all inconclusives. So we have those numbers, as I said in my opening statement. We have what I figured as 29, and maybe less by four -- by four or less -- felons. We have 42 bad registrations; we have 66 Culinary votes; and in addition to that we have two votes by bad registration which would be Nga Hunnh and Alex, so it actually would be 139.

Lambert: Mr. Close has another question.

Close: Mr. Foley, based upon what we heard in testimony earlier and also the press release that Ms. Von Tobel had earlier, there was some discrepancy upon the number that was identified in the newspaper. Was that what we're seeing today? Could you identify the differences for us?

Foley: Well, I've taken a whole bunch out of the -- that 170 number -- and put them into the inconclusive category.

Close: Thank you.

Lambert: Mr. Foley, it's a quarter to 12. Are we getting close to a kind of a natural stopping point --

Foley: Yes, very close, and I think I can wrap it up very quickly.

Lambert: You will have time to continue after, it's just if we could find a reasonable, logical place to pause --

Foley: Well, this may be a logical place. I wanted to just give a little bit more of an overview, but if you wanted to break now, that would be fine.

Lambert: It's your choice. We have a few minutes.

Foley: Okay. Well, Assemblyman Perkins commented earlier that maybe we shouldn't even be discussing the Taves's registration affidavits. I would point out that pursuant to the same statute that was violated, 293.5235, failure by the person assisting in filling out the applications, does not void the registration of the Taves. They're not included in my list of bad registrations. This is a very important issue, however, from, I think, numerous standpoints. One is credibility -- of Chris Giunchigliani, and I would hope to see some significant questioning on that issue as to her knowledge of the law, her voting on the law, her comments on the law, what she understood to be the reason for the law. The ability of someone with that kind of knowledge to miss this on this application form -- for goodness sakes, Ted Pappageorge didn't miss it, and according to the information we had, he was told, I'm not a citizen, I can't register. And he still filled it out.

It also, I think, goes there's hopefully no question, and there's nothing wrong with it inherently that the Culinary was a major supporter of Chris Giunchigliani. What was discussed with regard to these mail-in applications? I'm sure that Ted Pappageorge didn't just go down to the Election Department himself and obtain these. In fact, that one document that I said I wasn't going to refer to -- it's on tab C up towards the front -- what that does show is that -- this page -- what that does show is that on 8, 29, Glen Arnodo, Culinary Union rep, picked up -- and again, I apologize, this would have to be something that's testified to by both Kathy Von Tobel and Kathryn

Ferguson 'cause there's no title on the document -- but these show that picked up were mail-in registration applications numbered WA1001 to WA2000. Similarly, 3001 to 4000, 2001 to 3000 and 4001 to 5000. So the Culinary Union picked up 5,000 mail-in registration applications. Now the third one on the list, Gary Gray on 8, 25 picked up numbers 99, looks like 2, 0, 1 through 99400, so there were 200 of those picked up. Nothing wrong with picking up mail-in registration applications. What is, I think should be inquired of, is what was the discussion between the Gary Grays and the union organizers and Chris Giunchigliani about the procedure for doing these? There had to be discussion. Listen, you cannot -- these have to be sent in within three days. Make sure they mail them. Do this. Fill this out on the bottom. Discuss those meetings, and reports back from the Culinary organizers about the people that they were organizing -- questions that were asked about citizenship.

And again, zero in on the credibility of Chris Giunchigliani. I'm not -- I'm not here claiming any more than anybody else that she committed a felony. My statement in opening statement was that she violated subsection (10) and that violation of that election law, I think, is patently clear, and from the opening statement of Kathy England, I don't think she refutes it in any way. What she's talking about is whether it was a felony or not. And I think you should inquire of that. Not that you're gonna make the decision a felony, but how did you miss this? Did you do any other ones? Does she realize that as a candidate she cannot possibly be a registrar of voters under Nevada law? That under Nevada law the registrar of voters cannot talk about a particular candidate while they're registering voters? I suggest and contend wholeheartedly that's exactly why the bottom wasn't filled out.

And this law took up an awful lot of time as Senate Bill 250 during the last legislature, due to tremendous violations and problems with the mail-in registration. And is it a simple clerical matter? I don't think so. If you look at the registration statutes that have existed for so long, as Mr. Anderson pointed out, those still exist. You need to -- before you register someone -- obtain all but a birth certificate. And there are oaths taken. And there is control over the ballots themselves. This mail-in registration is an entirely different concept, and after it was first legislated in it was abused horribly. And that came back to the attention of the legislature, and the legislature had many meetings on it and promulgated these laws, which were then

immediately violated, not by, at least from what we see here, not by the people who had been violating them before, but by Assemblywoman Chris Giunchigliani.

That concludes my opening statement, so we can -- or not my opening statement, but my presentation.

Lambert: Mr. Price has a question. About a minute or a two-minute question, maximum, Mr. Price.

Price: Well, I think -- [To Chairman Lambert] you know me so well.

[To Mr. Foley] Your characterization, I think, of something you said, could be a little misleading. Now, it's a violation of law for a trained, registered deputy registrar of voters, I remember, to encourage people to talk about one candidate or another. But the document that we're talking about here, while it may not have been properly signed, which, you know, it doesn't appear -- with those types of documents, it's not a violation of law or a felony or anything else to be talking about -- in other words, when you hand someone the form that we saw that they could fill out and send in, that is not a violation of law, I don't think, although --

Foley: You're correct. From my reading of the statutes -- there's no violation in [talk over] --

Price: Okay. Campaigning -- right.

Foley: -- in campaigning and handing somebody a mail-in registration application and say, hey, if you're registered to vote --

Price: Right. We invented a technique back when I was doing registration drives for other organizations. We'd knock on the door and say, are there any unregistered Democrats here that would like to register? Whatever an unregistered Democrat is -- but at any rate, you've kind of indicated -- it would sound like it would be against the law, but in that particular instance it would not be.

Foley: It's not, but I think that's the motive --

Price: Yeah.

Foley: -- for not signing the thing. I -- it's up to you. [talk over] But I find it very hard to believe that a legislator that voted on this just happened to miss it. I think there's a reason why she missed it. I don't think she wants her name to appear on mail-in registration applications as having assisted with it. Not that it's illegal. If she had done that, it's not illegal. It just doesn't smell right.

Lambert: Ms. Buckley.

Buckley: Thank you, Madam Chair. I just wanted to enquire as to how many witnesses would begin at 2:00.

Foley: And that's based on me saying all my witnesses who want to testify come down, or can I say, I'd like this person to come talk to you? For instance, Chris Giunchigliani, or Kathryn Ferguson. I haven't talked to Kathryn Ferguson. I'd like her to testify.

Buckley: To the Chair. I had assumed that they would present -- be presenting their case and their case would be their witnesses. But that's for the Chairs to decide.

Foley: Then I have five witnesses.

Lambert: Mr. Spitler.

Spitler: Thank you, Madam Chair. You indicated you would assume that his witnesses would come here? I don't think Mrs. Ferguson's here as his witness.

Buckley: That's correct. I had a sense since it was the challenger's burden to prove that the election would have changed, that they would proceed with presenting all of their evidence, whatever that may be. I don't know what that is. But it would be their witnesses.

Foley: You know, we're back in the situation of, which I think is a little inconsistent, that they're my witnesses. I think the way the board is proceeding --

Buckley: They are -- our witnesses.

Foley: -- our witnesses. Whether I've talked to them before or whether they -- I know what they're exactly going to say or not, I think they

have evidence to present. And I don't know, necessarily, that Kathryn Ferguson is here as -- at the encouragement of anybody else. My understanding was she wasn't going to attend a deposition for one reason that was stated, is she'll be here Monday morning to testify.

Lambert: Well, it's time for us to recess until after the session, and a break for both parties to regroup and prepare for this afternoon. So we will meet again at 2:00 right here.

The Select Committee on Election Contests adjourned at 11:56 a.m. and reconvened at 2:02 p.m. The roll was called, with all members present, and the hearing continued.

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Spitler: Now, before proceeding with this afternoon's -- the continuation of the hearing -- I do want you to know that there will be no cross-examination, we will stick to the original rules of the committee, as adopted yesterday. I will, however, let you know that it is the Chairs' intention to call to testify before this committee, Kathryn Ferguson, Kathy Von Tobel and Chris Giunchigliani. So there will be an opportunity for them to, in fact, respond to things that have been said and to really -- I think enlighten the committee in terms of procedures or various kinds of things that have been indicated before us this morning.

We also plan to go, probably, until about 5:00 at which time, if necessary, we would take a two-hour break, if there needs -- if there's any more new evidence or anything like that, that needs to be evaluated. After dinner we would then reconvene at 7:00 p.m. and go no later than 9:00 p.m. for this evening. Should we not conclude our work today, we will -- the hearings will continue again tomorrow morning at 8:00.

In light of the time set aside for these committees, I would indicate and respectfully request of those people appearing before the committee, that you keep your comments and your testimony really directed toward what the challenge is about, and in defending these things -- I know there's a hundred things that go wrong in an election and sometimes those are relevant to other elections, or whatever, but let's try to stay, as much as possible, on point to what's before us today. With that in mind I would ask Mr. Foley, if

you wanted -- if you had completed your presentation, or if you wanted to do some more time.

Foley: A little bit more time, and then I was gonna call Kathryn Von Tobel and Kathryn Ferguson, and the like, so we'll just proceed along with you guys doing the questioning.

Spitler: Okay.

Foley: We'll just proceed along those lines.

Spitler: Thank you very much.

Foley: I want to introduce as another exhibit, a newspaper article from the -- I guess the Ralston Report -- that discusses -- the bottom part is called "The Invisible Culinary Hand" (Exhibit F), which just sets forth facts regarding the Culinary's involvement in this particular race.

Spitler: Also, I would indicate anyone wishing to speak this afternoon, there is a public testimony period. I do have some names, but if you didn't sign in, it would be important that you do sign in at one point, before we get to that section.

Foley: The pertinent information in there is in the bottom part of the right-hand column. Specifically, that, "Insiders say the union tallied more than 3,000 man-hours working for Giunchigliani in the district ...".

Spitler: Mr. Foley, if you'd move just a little bit closer to the mic.

Foley: Excuse me. Again, the pertinent part of that exhibit which for reference purposes I guess we'll mark as Exhibit 2, in order.

Spitler: If I can ask legal counsel, are we at 2 on Mr. Foley's files?

Erdoes: Yes.

Spitler: Yes.

Foley: Okay. That simply references that insiders say the union tallied more than 3,000 man-hours working for Giunchigliani in the district.

Also, what I have is an original of the deposition that we'd taken in my office on Friday and was attended by Kathy England. The deposition is of Herrick Edward Frost (Exhibit G. This exhibit may be viewed in the Legislative Counsel Bureau Research Library.) who was an election worker, a clerk, at the Las Vegas Academy Precinct, or polling place, on the day of the election, and I'd like to submit that as my next exhibit. I don't have copies for everyone. This is just the original and I will give it over the -- the only thing I really want to pull out of this, or refer to specifically, is where -- and this I'm reading on the bottom of page 9, starting at line 25, question: "Did you at any other time during the day see any other individuals inside the polling place that were Chris Giunchigliani's campaign workers? Yes. Tell us about that. Answer: By about 1:00 o'clock in the afternoon through 4:00 or 5:00 o'clock, there must have been seven or eight of them all sitting on the floor. There were two chairs and the rest of the people had to sit on the floor inside the polling place, and they all had Chris signs on them.

"Those were the only ones. Is there anyone else here? Is there anyone else running for office besides this woman? It's just a mental thought I had. They were the only ones I saw."

Moving ahead to page 11, at line 17: "And at one point during the day you saw Chris Giunchigliani come into the polling place? Answer: Oh, she was there I would say almost full time from 1:00 o'clock on. She was there full time. Question: What was she doing? Answer: Smiling and talking to these people sitting on the floor basically. She never came to our polling place. [Question] These people on the floor are the ones that you said before had Chris Giunchigliani buttons and cellular telephones? Answer: Yes." That was actually the end of my examination of Mr. Frost.

Spitler: If you would please -- can we have copies of this made? Did you want us to have copies of the whole deposition, or of just the relevant points, the ones that you cited.

Foley: There was extensive cross-examination, I guess for discovery purposes, by Mrs. England. My examination took 11 pages and two lines and the total deposition is 70 pages. So, for purposes of my case, I don't care to have any of Mrs. England's examination on it, but for purposes of this committee, if you'd like it that's probably the best way to do it.

Spitler: I think it best that we have our copies.

Foley: Sure. And that would be Exhibit 3.

Spitler: Yes.

Foley: I have had an opportunity to discuss 293.5235 with Mr. Dale Erquiaga from the Secretary of State's Office. He was involved -- heavily involved -- in that bill during the '93 legislature, and I would like to call him as a witness, and he has asked, from the formality standpoint, if the committee would call him as a witness since he's with the Secretary of State's Office. And he's here at this time.

Spitler: We can list him as a potential witness to be called by the committee. Do you have further -- a further presentation for your case?

Foley: Yes I do. --

Spitler: Please continue.

Foley: Okay. I'd call Kathy Von Tobel.

Spitler: Yes, is there a question, Mr. Perkins?

Perkins: Thank you Mr. Chairman. Mr. Foley, that pertinent part that you spoke about in the deposition, can you identify the polling place where that took place?

Foley: I'm sorry. He was at the Las Vegas Academy.

Perkins: Okay.

Foley: It's the old Las Vegas High School.

Perkins: Thank you, Mr. Chairman.

Spitler: Thank you. Good afternoon Ms. Von Tobel.

Von Tobel: Good afternoon.

Spitler: If you would, raise your right hand. Do you solemnly swear or affirm under the pains and penalties of perjury that the testimony and

evidence that you will give in these proceedings will be the truth, the whole truth and nothing but the truth, and that you will answer all questions presented to you to the best of your ability and personal knowledge.

Von Tobel: Yes, I will.

Spitler: Thank you. Please proceed.

Von Tobel: My name is Kathleen N. Von Tobel, and I reside at 1324 South Fifth Place, Las Vegas, Nevada, 89104.

I guess I want to give you a basic run-down. You're probably wondering why I've contested the race, why I've put in so much time and effort, and I want you to know how much time and effort I've put into this. This is not something I took lightly, at all. It's the first time I've run for office; it's the first time I've contested a race, and it's certainly been a learning experience.

We talked -- you heard earlier today that I had challenged some voters early on. I don't know if you heard or understood much of that, but I want to explain a little more. When I was walking my district, what I learned was there were a lot of individuals that when you went up to the apartment, they no longer lived there. When you got to an address, it was a place of business. And there were a lot of situations that didn't make sense. And so I continued to tell my grass roots manager, my campaign manager, Helen Foley, of these inaccuracies. And we finally came to the conclusion that it would make sense if we had all had the right to pre-challenge some voters, because I'm sure you all understand to challenge a voter on election day, it's very difficult. You have to have an individual that lives in that precinct to be at the polling place at the time they come to vote and challenge their right to vote right then and there.

So we met with Kathryn Ferguson prior to the general election -- I don't remember the exact date. She gave me a form that said, either I or somebody that worked with me or somebody in the district, could fill out and challenge -- pre-challenge -- these voters. And, to my recollection it was about 120 voters -- I think the actual figure from the Election Department is 112 -- and of those 112 that I challenged -- and it was because I had physically walked, mailed

first-class mail to them, it had come back and showed they didn't live there.

Four people came forward to vote on election day and I believe it was two actually did. There was one woman that was -- she didn't have a mailbox at her house, that's why the mail came back. She never answered the door. We were under the impression that she didn't live there. And, she actually called me at my home and told me when she got the letter from the Election Department, she did live there, and we did everything in our power to make sure that the challenge we had filled out was fixed.

And so, this showed me there was a problem in District 9. I knew there was a problem because I had walked it, and I've lived and breathed this district for the last year.

After the election, and I knew it was close, I still didn't really question the fact that I had lost. I had lost the election. I could live with that. But I went down on the Wednesday -- I think it was the week after the election -- and got the abstracts which show you how many votes you've gotten per precinct. And had I seen clear evidence that the votes were basically give and take, here and there, the 123 was spread very evenly over the district, I would have left well enough alone. But I didn't see that. What I saw was, I won in every precinct except for one, west of I-15 and in what I considered -- what you call in terms when you're running, you call them yellow dog precincts -- and I hope that's not a term I shouldn't use -- I had definitely lost in those precincts, and that was apparent. I knew that I wasn't going to win in Meadows Village. I had walked it some and it was clearly a Chris supported area. But what I didn't feel comfortable with was the percentages that she was able to pull out of the precincts that we have in this book.

And, for my own peace of mind, and because I knew I had already found so many voters that didn't live there, and I clearly had shown by them not voting, there was something amiss. And so I decided to do an investigation. So Helen and myself and somebody from the Chamber and a couple of other friends and our poll watcher called a meeting with Kathryn Ferguson, and just said, we are questioning this. We have a feeling that something was not right. And I suggested just an exploratory walk. Let's go out there and ask people. It's kind of like doing a puzzle. It's a lot easier to figure out

the puzzle if you start at the finish and follow your way up to the start position, after the fact. You know, people had already voted. When you're out walking, you don't know who's gonna vote, but after the election you can see who voted. It's then easy to find out, well gosh, that business -- you know, he was registered at this and he voted there. When I was campaigning I didn't know if they were going to vote or not. But I sure did after the election.

And so, Kathryn Ferguson was extremely helpful. Actually offered to walk with me on this exploratory walk. However, the next day she called up and said she had a cold and she wouldn't be able to go out, but she was still making sure I had my walk list to take with me. Because there was a computer error, the walk lists were not ready, and they would work overtime to have them ready for me, so I could do my walk, and I could pick them up Saturday morning at the Election Department. I showed up with my volunteers and picked up the walk list and we started walking the district, and just asking people if there was any irregularity in the election. I did this on Saturday and Sunday -- it would have been the weekend prior to when I had to officially contest the race, which was Tuesday. This is when I realized the buildings that had -- prior to the election I had actually campaigned at some of them that were behind the (indiscernible) were now boarded up. And another building that I realized a number of voters were at was torn down. And then I walked to other apartments and asked apartment managers and found mailboxes and different aides went to doors -- just found out how many people just didn't live there anymore. And this was just less than two weeks after the election. I also came upon Jose Cortez Solano, the Hispanic gentleman that we did attempt to depose, but weren't able to follow through. And he came down the stairs at his apartment and I -- you know, I just said I'm here to ask some questions about the election. And maybe he doesn't speak much English, but he clearly said to me, they made me sign the form. I tell 'em I'm not a citizen, yet they make me sign the form. And he didn't know who I was, and in the meantime I could, you know, I'm Kathy and Jess was with me. Jess Foster was helping. And he just openly told us of the intimidation.

I was sickened at that point that anybody would put pressure onto an individual -- and he said it happened at the workplace -- he worked at the Luxor in the kitchen -- anybody would be put under that kind of pressure to register and vote, I thought it was wrong.

But he clearly said, oh no, I do not vote. They can make me sign the form. Cannot make me vote. And I think -- you know, people can say he doesn't speak much English, but I found with a lot of individuals they will select when their English is good and when their English is not so good. Jose spoke to me enough that day, I knew exactly what was happening, and I think if he was ever put under oath he would speak better English than -- but when they're scared and they're afraid of what is being done to them, then all of a sudden their English isn't quite as good.

So, this has brought us to where we are today. I decided when I understood that, I saw so many votes that people just didn't live there, I read the law, I read the statutes, and I guess the biggest mistake I made was not getting an attorney in time to fill my paperwork out properly. I'm not an attorney, I read the statutes, and to the best of my ability I filled out my contest. Obviously, I didn't do as good a job as I should have. And I will never make that mistake again. If I'm going to do anything like this, I'll make sure I get an attorney's services prior to ever doing it. My intent was pure. It was just a mistake on my part.

And then I started, basically, an audit of the election. I've worked in auditing for over ten years and that's what you do. You just thoroughly research all of the ins and outs of the election, and what actually went on.

The felons we've talked about today, we didn't know about. I knew there were problems in the district, but I didn't know felons had voted until I read it in the newspaper. I knew there were an awful lot of inaccuracies, I found that during campaigning, but so many more have come up in the last month, it's been interesting. And I just feel it's very important that we seriously look at fraud in elections. And it's not -- it never has been my position to want this seat from Chris. My position has always been, there have been inaccuracies and I think we all need to look at them very seriously, and do something about them. If this committee were to decide that there are enough votes to change -- or if there was enough malfeasance -- that would be fine. But it was never my intention to take the seat from the Assemblywoman. And that's --

Oh, I do want to say a little bit of the Election Department. The fact that they were so cordial, so helpful, at the very start, I think that

all changed when they realized that some of the questions I was asking, and some of the evidence I was pulling, put a bad light on what they may have done. When I would find -- a good example is that I think it was ten people registered on Western Avenue. I said to them one day, people don't live on Western Avenue. Anybody who has lived in Las Vegas for more than a couple of years knows that that's an industrial area. Yet I found a mail-in ballot request from a gentleman stating, send my absentee ballot to Arizona. My primary residence is 1515 Western Avenue. If I was an election worker, I guess I would have questioned it. I was frustrated that they don't even have the capacity to question this. It's not in their mind set. They don't have the time or energy. They don't even have a map in the place that shows what's commercial, what's residential. They just -- it's not there. And I got to the point where I almost felt I was doing a service for them, although I don't think they saw it that way. They started feeling threatened to the point where memos were being written, inter-office memos. I wasn't being told of any of these. I was being shifted from one person -- first it was Peggy that was helping us, then it was Mary Moore, and then it had broken down to the point where there was a temporary that I was assigned to. And every day by 10:00 o'clock if I had wanted to request some affidavits, or whatever I wanted to request, I had to give my written request to this temporary and she would have the items pulled for me, hopefully by the end of that day. And all of these copies of requests that I was giving them were also given to Chris Giunchigliani and Kathleen England. So they knew, throughout the whole process, what I was requesting. There was never any secret of what I was requesting, because we typed up a list of every affidavit we wanted, and as I understood, they were getting these requests as we typed them up.

It's unfortunate that this has happened with the Election Department, because it was never my intent to point a finger at them. It just happened in the process. I found that their procedures lacked some credibility, and when you start talking about malfeasance, it does point fingers and it was an uncomfortable position for Kathryn Ferguson, and it still is not my intent. I just don't feel that they're set up to audit an election. And it's -- you know I spent seven or eight hours a day over there, to the point where I thought they might invite me to the Christmas party. But they didn't. And, I guess, maybe my persistence has surprised some people, but what I saw

was fraud, and I want to get to the bottom of it. And that was why I'm here.

Spitler: Well, we appreciate your being here. Mr. Anderson, you have a question.

Anderson: Thank you, Mr. Chairman. Ms. Von Tobel, the 112 voters that you found the disparity between the address on your walk list as you went through -- having walked a few precincts myself over the last couple of years, and long before that -- I've often found that to be a very, very common problem, you know, where people move in and out. Do you have any way of knowing whether those people actually left the Assembly District, rather than just merely like moving from one side of the precinct to another side of the precinct? Do you actually know these people have left the entire Assembly District?

Von Tobel: The best way that I know if they left is that so few of them came back and voted. I know if --

Anderson: I know it's an embarrassment to all of us, the number of people who register to vote and then don't exercise their franchise.

Von Tobel: It was a lot of businesses, too. A good example, and one that was in the paper, of Culinary headquarters. Not only -- well, Culinary headquarters is my district. Also, Local 311 is in my district, and it's located at 1311 South Casino Center Boulevard. I walked in there because there were so many registered, and it was Anthony Greise who is either the business agent -- he was registered to vote there. I asked if he lived here, and the gal said, well of course he doesn't live here. It's his office. He was one that I didn't even have to challenge. Kathryn Ferguson said, well, I will send a letter off to him immediately, and I understood not only did he get the letter, he then came in and said, oops, let me reregister.

Anderson: I'm concerned about the 112 here. But you have no way of knowing whether they really actually -- they could have moved to an apartment -- from one apartment in a larger apartment complex, like when a building was torn down, to even stay within the same district, but into another apartment complex.

Von Tobel: If that had been the case they had plenty of time to reregister.

Anderson: Okay, but -- it's quite possible that they may not have. Not thinking that they had left the district, as far as they were concerned.

Von Tobel: As far as I know, the Election Department did not receive any requests or concerns from the challenges that I filed.

Anderson: Okay.

Spitler: Ms. Buckley.

Buckley: Thank you, Mr. Chairman. Ms. Von Tobel, some of the remarks that you've already made are probably more appropriate for the Elections and Procedures Committee, on improvements to our current statutes and kind of things that you noticed that you'd like improved upon. For purposes of our testimony here today and our purpose here today, is to see if the results of the election would be changed by the irregularities that you are alleging. Besides those listed by your attorney, do you have any specific incidents of people voting where they should not have voted, such that the election result would have changed?

Von Tobel: You want specific names? You want me to go through every affidavit I walked to and found they didn't live there? Is that what you --

Buckley: Yes.

Von Tobel: Okay. Before I do that, one other point. Regarding the 66 Culinary workers that registered -- I mean that voted early, at the Election Department -- how that came to be I didn't know that activity had taken place? It was in a casual conversation that I had with Kathryn Ferguson. And Jess Foster happened to be there with me, but because we didn't realize this would be such a point, I don't know if he recollects it, but my recollection is they said, boy, you know, the day the Culinary came in it was pretty hectic. You can't bring in a thousand people to early vote without it being hectic, because early voting -- I also early voted, and it wasn't a large area, it was a hallway. I've been over to the Election Department so many hours now, I can describe the room and the color of the tile. And, it would have been very hectic and I said, oh, well tell me about it. Well, it was just basically they were in there, and there were individuals standing close behind the voters, even suggesting how they vote.

They had campaign materials, and Kathryn said to me -- and I finally had to toss a couple of them out, and once I did that, then it quieted down. And so I said, well, is there any way of telling who from my district voted -- 'cause at this point I didn't know how many of those were from District 9 -- and they said, well, yeah, we have the roster book for early voting, and we can pinpoint exactly because we know what time they were here, who from your district voted that was on those buses. And that was the document we have marked C. I think C1. And they said, we can put together a document for you showing you by precinct who these early voters were. They weren't able to give me the names. If they'd given me all 66 voters, I probably would have gone and talked to all 66, but I wasn't able to be given that information, and I don't think I could have walked up to Culinary and asked if they could give me the names of all 66 that were from District 9. I think I can only assume if they were going on a bus as Culinary, and knowing that Culinary supported my opponent, I don't think any of them voted for me. I'm pretty safe in assuming that.

And, as far as polling places, I was very active on election day. Not inside polling areas. About the only thing I did in a polling area was took lunch into one of my poll watchers and left. But it was clearly evident, when the day first started, that there were a huge number of Chris G supporters running around. We got calls from some constituents that were at their home saying, you know, I've had a Culinary member come up to my door three times, now, and ask me to vote, and one of our -- somebody that does the news -- George Knapp, even mentioned -- he lives in the district -- I mean he's a registered Democrat and had three people come to his door and say, you know, you haven't voted yet. Are you gonna get out and vote. Perhaps some people have called this the greatest get out the vote effort in the history of Nevada.

What we saw inside the polling area was a lot of supporters wearing Chris G badges, which I didn't feel was fair. I knew the rules. I couldn't have people in there wearing my badges. We were very careful to not have my name on poll watchers' badges. And I didn't have the number of volunteers that day that she had. I didn't have people sitting on the floor in the polling area that she had. And it was a concern enough that Helen Foley stopped by the Election Department and said, something's got to be done. We're getting calls from our poll watchers that this activity is going on and nobody

seems to want to stop it. One of my poll watchers that was at Fremont Jr. High is -- in our original packet of contest we had a statement from her, just talking about the activity, that there was a basket of goodies passed around and in a loud voice, compliments of Assemblywoman Giunchigliani, in the area that voters could hear this. What I didn't realize at the time, and I found out later, that was the coordinator of that polling place, and her name is Pat Patron. And not only was Pat in one of Chris's brochures openly endorsing her candidacy, she also was registering individuals, because we found voter affidavits with Pat Patron's name signing people up to vote, and she came to a party I had at my house, along with Peter Cook, when I invited that precinct to my home. She also made numerous phone calls to my home. I recall five phone calls, trying to get information, saying, we don't know anything about you. We don't know when you were married, where you are from, how long you have been married, how old are your children. I don't know if it was trying to personally embarrass me, or what. But this is my experience with Pat Patron. So I wasn't surprised to find out that when there were the most problems at a polling area, that Pat Patron was the coordinator for that school.

I do feel that this was malfeasance on the part of an individual that was hired for that day, to be totally unbiased. And I would like to talk to Pat Patron, find out how she was totally unbiased when she had been in the campaign brochures, when she had openly campaigned for Chris throughout the campaign, and then worked as a coordinator.

And now I'd be happy to go through the list of --

Spitler: Before you go through the list, there was a question from Mr. Price.

(1618)

Price: Thank you, Mr. Chairman. Kathy, I want to tell you up front, I would be very happy to have you as a colleague up here. Not necessarily from Assembly District 9. But as I said earlier this morning, and I think it needs to be at least talked about for the record, and so that we all understand everything that's going on. And not for the audience to get the wrong impression, but do you kind of remember the first time we met? It was before you moved into the district to run. Do you remember the conversation? I would ask you to reply to this. The conversation that you and I had -- and I'm going at this

for a reason. When the word was already out that you were going to move into the district to run against Chris, and at that point in time there were a number -- and I want to say at least four or five, if not more -- Assembly districts where my former colleagues had resigned or announced that they were not going to run and so forth. And I suggested to you that it would -- why not move into a district where it was completely open, because it is so much easier to win a campaign in an open seat, even with someone that I have to say, is respectful of a candidate and attractive -- and I'm not talking about as a person, but an attractive candidate -- one who can speak well and come across. Do you remember that conversation, and I suggested that you should move into a district that was -- that did not have an incumbent? I don't remember where we were at or what function. Probably some political function. But, do you recall that conversation?

Von Tobel: I can vaguely remember it, and I'm not sure what I said to you.

Price: I'm not either, but I would like to ask you now, and I'm gonna follow this with some things. You did have a choice and you did move in specifically to run, because you were talking about it then. And, may I ask why you didn't move to a district that was wide open, and why you chose [talk over] -- and I have a reason for -- and I think it's important. Now I do think it's fair, because I think that the public and electorate, and I think that we are entitled to know all of the forces that are in play here. And I'm going to follow this, one way or the other.

Spitler: Well Mr. Price, just let me ask you quickly here. We're here to establish evidence of her claim that this election should have been won by her.

Price: Yes.

Spitler: Is your question [talk over] relevant?

Price: And my question [talk over] -- yes it is -- because the dawn of the problem -- or what we're sitting here deciding today -- started long before Kathy even moved into the district. I want to know why we're sitting here today on a challenge. And we need to know the whole picture.

Spitler: Well, I would remind you that we've asked Mr. Foley to state his case as we've asked Ms. England, and not to get into a cross-examination thing of building in political theories. But if your mark, or your question, is wrapping around to illegal votes that should have gone -- that would have changed the outcome of this race, please don't badger in any way --

Price: Oh, I -- did you take this as badgering? I'm sorry. I didn't --

[Talk over]

Von Tobel: [Emotionally upset] It's a very personal matter.

Price: Okay.

Spitler: Would you please withdraw --

Price: I'll withdraw my question from Kathy. But I do not --

Von Tobel: If I can compose myself for a minute.

Spitler: Yes. Have you withdrawn the question, Mr. Price?

Price: Yes.

Spitler: Thank you. Ms. Buckley.

Buckley: If I can make a comment. I would like to see these proceedings confined. Instead of casting aspersions on the Culinary Union for legal activities and getting people out to vote, and casting aspersions on the chamber or any other forces that assisted Ms. Von Tobel, if we just stuck to the issue of, were there illegal votes cast, such that the election results would have changed, we can proceed with that decision and the day would go a lot shorter, and I think, stick to relevant issues.

Spitler: Yes. Mr. Price.

Price: I would respectfully suggest that in the legislative parameters our main interest, or should be -- in my opinion, my humble opinion -- is to try, and particularly when we move into this arena here, to try and learn what happened, why, are there influences that may be good,

bad or indifferent, controlling the activities of the state. Now there were people who, here in Washoe County, pardon me, across the valley in Washoe County, were conducting fund raisers long before the election, seeking to raise one, two hundred thousand -- I'm looking right across at a good friend that knows what I'm talking about -- a lobbyist -- here, trying to raise money for the races down there, or for this particular race.

My point is, there are a lot of people and a lot of organizations -- for reasons that I may or may not know. We know that Chris, because of the last, the SIRS case, and all of those things, certainly got a lot of people unhappy. But I think we need to know all of the things, all of the angles that are being played here. We are not a court. I make my decisions based on a set of facts, and you may make yours on a different set of facts and the Chairmen may make theirs on a different set of facts.

But I'd like the citizens of Nevada to know everything that's going on that we can bring forward to them in the legislative record. And if part of that is the fact that there were forces moving to this state, even to the point of perhaps getting an excellent candidate, who I -- as I said, and I say in all honesty -- would be honored to serve with. But if all of that was aimed at one particular person here, then let it be on the table. Let the cards be on the table. That's not illegal, by the way. I mean, I'm not saying that anything illegal went on. But I'm saying that the citizens, and the record, and we as a decision-making body and a panel in this case, have the right and should know every force that's in play here.

Spitler:

Well Mr. Price, I would respectfully say that I think Ms. Von Tobel said quite eloquently, when you look at challenges it's sometimes difficult to put together a puzzle from one end and then reconstruction backwards. And I think that's rather good. Before us -- our challenge in this committee -- is to report to the Assembly our findings of whether the Contestant has met the burden of proving that any irregularities shown were of a nature as to establish that the result of the election was changed thereby. I do think that we're on point as to what we're looking at here. And I really respect your idea of wanting to show a bigger picture, but I think some of these things more appropriately belong in Elections and Procedures, and I'm sure that's the committee that's gonna get a lot of activity looking at this, because this hasn't been easy for either of the parties

sitting before us. Either Ms Giunchigliani, who is defending herself, and Ms. Von Tobel, who feels that something has been taken from her. But I have to emphasize that the burden of proof of that taking, as I understand from Rule 45, rests with Ms. Von Tobel. And I'm really sorry if anything happens that strikes personal cords, because we've all run in races, or we've worked on races, and we get very passionately involved with wanting our candidates to win. And it hurts when you lose.

But today is a stronger point of view that we must take in a legislative setting, and that is the burden of proof rests with Ms. Von Tobel. And I think we need to stay on point with that, because we can't meet for a hundred hours out. We have a time certain when we have to report back to the full Assembly.

The Assembly is absorbing the cost of what occurs today, because this is what the Assembly should do. We have a challenge that's been brought before us. On the other hand, to take it farther, or to let people go on point that has nothing to do with what we're charged with as a committee, we need to stick to the point.

So, Ms. Von Tobel, I would appreciate it if you could --

Price: Thank you, Mr. Chairman. I'll withdraw.

Spitler: Oh, God, I appreciate that, Bob. You're awfully hard to spar with. I would really appreciate it.

Tell us where you lost those 100 -- I think you said you have 137 votes.

Von Tobel: Yes.

Spitler: We need to know where those votes are, and did they vote for Ms. Giunchigliani?

Von Tobel: Okay. Going back to the Culinary, it is perfectly fine for the Culinary to support a candidate. But what I'm saying, they cannot cross the line. There are laws that we must follow, and on early voting, yes, they had every right to take people by buses, but they did not have the right to stand in there and make sure those people voted for the correct candidate. They knew how critical they needed those votes.

I could have taken bus loads of my supporters, and as Assemblywoman Tiffany said, it would be great to have that type of grass roots effort. We all had grass roots efforts, but when you cross the line, when you have campaign materials, when you're standing close behind and you get such a huge group in there making sure they know who they are to vote for, then yes, I will stand by those 66 votes. Those were definitely Chris votes. I don't feel that those individuals had any other way of making up their minds. They were Culinary members, they were put on a bus and they were taken to vote. So I, unequivocally believe those votes were unfairly cast and should be a part of the 137.

I also feel that way with the felon votes. That's malfeasance. I ran in a district that had numerous problems, and I just have attempted to uncover those problems. And I will go through, as quickly as I can, since I've walked every single one of these and talked to these individuals or talked to apartment managers, I will start with Las Vegas 5. If I could just show you a map of Las Vegas, just to give you an idea of my precinct, what it looks like. [Map being placed on easel] This is a map that I got from the city that has clearly broken down to what is a single family home, a town home, a condominium, a commercial residence, and so it is very easy to pinpoint what was a residence, what was not a residence, and if you want to have closer inspection, you can certainly see that it's broken down.

Las Vegas 5 which is up in the upper area, runs up along Bonanza -- takes in a little bit of Bonanza. Runs along main street, I think over to Bruce, is Las Vegas 5. We went to 600 Bonanza. It's an apartment complex. We found out that Barry Sugar had not lived there for three or four months, yet voted. Antonio -- I won't even attempt to pronounce the last name -- had moved over a year ago from that location.

On the next page it was inconclusive because we were only able to be told that he moved before November 1st, and so William Jackworth's state is inconclusive. We're not counting that in our figures.

The next page shows the signature book --

Spitler: Just one moment, Ms. Buckley has a question.

Von Tobel: Okay.

Buckley: Sorry to interrupt.

Spitler: Turn your mic on please.

Buckley: Thank you, Mr. Chairman. Were you finished with regard to the Cul -- the 66 Culinary Union workers?

Von Tobel: Yes. Unless you have other questions.

Buckley: I had a question on that. During election day, were you actually present in any of the precincts or the voting places, and did you personally witness irregularities?

Von Tobel: I had poll watchers personally in most polling areas. As far as personally witnessing, I felt it was best I distance myself in that activity. Other than taking lunch to some of my poll watchers, I did not spend much time in the polling areas.

Buckley: At the time when you were delivering lunch, did you personally observe any Culinary Union worker standing so close to a voter as to intimidate them?

Von Tobel: No, I did not.

Buckley: And, on the individuals now that you're going through, you're indicating that they did not reside there at the proper time. That they had moved out prior to the cutoff for voting.

Von Tobel: Yes.

Buckley: What evidence do you have that they did, in fact, move out prior to that time?

Von Tobel: My testimony. I walked and I talked to these people. We indicated either we talked to the apartment manager on Antonio's -- we talked to the apartment manager, yet we didn't note that. And if -- I don't know if you can appreciate how much time this has taken, and the little bit of time we had to put together our case, so, please bear with me. It is my testimony. I've been out, you know, working

seven or eight hours with this a day. So, if you can bear with me. This is my evidence and I can understand your question --

Buckley: Yeah, I just want to be sure before we unseat someone that we do, in fact, have evidence, and I'm wondering if you would plan to present that by say an affidavit of a manager who could testify of their own personal knowledge that, in fact, a tenant had moved out, or how you plan to corroborate it. If I'm understanding correctly, it's based on your conversations with people who resided on the property.

Von Tobel: That is correct.

Buckley: Thank you.

Spitler: As a follow-up question to that, did you also have first-class mailings to those people, that were returned to you to track up each of these?

Von Tobel: On some of them I do, on others I don't.

Spitler: Is it noted in any way on here, that we would be able to see that?

Von Tobel: I don't know that we noted that. We brought a box of every bit of our evidence, and I do have return mail, a number of them. What I did find by talking to a lot of these apartment managers, on such a transient area they get so much return mail that they usually don't send it back; that the postman doesn't even realize people have come and gone so quickly; that it's even frustrating to the Election Department, because they said to me, why don't these people send the mail back. We would then know we needed to purge them from our records, but it doesn't always happen, because it is a very transient area.

If we can go to Las Vegas 11. The first one was Charles Avery, registered at 716 6th Street, that's Nifty Nickel, the small newspaper that you can put ads in, you know, advertise your item. Phillip Duggan at 200 8th Street. We walked there. We learned that it -- it looked like -- it is a residence, it's a rent-by-the-week motel, but you can also rent mailboxes. Phillip rented a mailbox, never physically lived there. He just has -- gets his mail there. We could not ascertain where he lived.

David Faucett at 1110 Fremont. It was an accounting, income tax office.

Dennis Morris at 200 9th Street. It's a half-way house for felons. That could be one of our felons, but we're not sure.

Vincent Passafume at 704 6th Street. It's a vet center. They do counseling for veterans. I clearly asked if anybody lived there. No, it is not a place for anybody to live. It's strictly a day counseling center.

Kenneth Pitts at 200 8th Street. There again that's a mailbox only. He doesn't reside there. He just rents a mailbox at that location.

John Sacco at 808 7th Street. He's an attorney. It's an attorney's office.

Margaret Singleton at 915 Garces Avenue. That's an answering service business.

And then Andrew Vicks at 704 6th Street. That's the vet center again.

The next page showing inconclusives, I won't even bother with the inconclusives, because they're irrelevant. They're not in our numbers. We may have found there were significant, I think -- and all this backup is just the walk list to show, yes, they are registered voters, and then their signature, yes, they did vote.

Las Vegas 21, George Bienkowski at 122 South 15th, moved before August, per the manager.

Joel Driver at 1420 Clark. It's a boarded up business.

Bjorn Lawrence at 1617 Fremont Street. It's a business, Lawrence Action Speaker Radio. And Connie Lee Lawrence at that same address, a business.

Edward Lindner at 125 15th Street. Per the manager, moved before August.

And Eugene Sharratt at 1620 Fremont. It's an upholstery shop.

And so we want to go to Las Vegas 31. Peter Forseth. On election day he had been inactivated by the Election Department. If they have knowledge that an individual has moved, when you go to look at the roster, it says inactive. He went on election day, and insisted on voting, showing evidence that he did live there. So we decided to check him out. We went to his address, 1708 Fairfield, and was told by the manager that he had actually moved six months prior, so the inactive should have stood, even though he was allowed to vote.

And Frank Bigley and Irene Hoy at 1704 Fairfield had moved approximately four or five months ago, all per the same manager.

Blanca Ayala at 1730 South Main. It's a boutique. She had voted.

Stephen Broadbent at 116 West New York number 5. We walked and tried to figure this one out. It's actually Culinary's headquarters. There is no house address there. 116 New York is at the corner of Commerce in New York, and Culinary headquarters takes up the entire block from Commerce up to the next cross street, which -- I'm not sure what that is.

Trudy Catching at 2404 Western is World Wide Flower and Gift, and we ascertained that she was an employee.

Margarita Chaidez at 241 West Chicago, number 5, had moved months ago, per the manager.

Livingston Cooper at 1700 Western has an import business.

Stan Denys at 1803 Western has American Building Products.

Michelle Ennis at 1515 Industrial. That's Go Downs Concrete Cutting.

Owen Green at 1410 Casino Center, number 9, had moved three months prior. Apparently that information was from the manager.

William Krummel at 1225 South Commerce. That's Sun Vacations.

Harry LaFavor at 1515 Western. A little earlier I mentioned the gentleman that requested an absentee ballot, and I know in my box of evidence I have it somewhere that he put that down as his residential address. Western Avenue is strictly a commercial area, and he absentee voted from Arizona.

Mervin Smith at 1901 Western is a business, Star Speciality Company.

Daniel Vlaidavich at 1500 Casino Center Boulevard, number 19 moved months ago, per manager.

Robert Wetzel at 1802 Western. It's an empty lot storing pipe. And there's a sign that says by O'Rourke Plumbing.

And if you go to Las Vegas 40, we have Harry Stone at 2213 Paradise was A-1 Answering Service.

Raymond Warchaizer at 1050 Sahara was Latin American Dental Association. I'm not sure if he's the dentist there -- [comment from behind her] oh, he is the dentist? Okay, he was the dentist. I remember walking there, I just can't remember if his name was actually on the door.

Pearl Ward at 2213 Paradise was the A-1 Answering Service.

And Las Vegas 92. Marco Mata at 130 West Boston was a boarded up building.

Sheldon Millor at 301 St. Louis. It's a business area, but we could not find where 301 even exists.

And Gottom Negassi at 241 West St. Louis, does not live there, per the manager.

Anna Robert at 130 West Boston was a boarded up building.

William Sousoures at 130 West Boston was a boarded up building.

And Sandra Tinsley at 131 West Boston was a boarded up building.

And then Las Vegas 2 we determined was inconclusive, and so I don't need to go over any of those.

Spitler: Mrs. Lambert.

Lambert: Ms. Von Tobel, I don't know whether you've seen this, but this is the exhibit submitted by Ms. England.

Von Tobel: Uh-huh.

Lambert: She has in one of these precincts, the one you're on now, on 92 and 130 West Boston, has more people who voted than you have mentioned, that live there. [Talk over] Would you --

Von Tobel: We only determined four voted. I'm not sure how many she's showing voted.

Lambert: She has -- from that one address -- has four names. One didn't vote, and one voted early and two voted regularly. But to the voter registration, you have the same names that they have. But the one who voted early, you don't have and they do have.

Von Tobel: What was the name?

Lambert: Anna Robert.

Von Tobel: Oh, I have Anna Robert. 130 West Boston.

Lambert: Oh, yes, I'm sorry. Yeah, okay. I'm sorry; then there is -- they all match.

Von Tobel: Yeah, we only had four from that location. There were numerous others registered, but only four voted.

Spitler: Please proceed. Oh, Mr. Anderson.

Anderson: Ms. Von Tobel, obviously you understand your district, and I admire you as a candidate, because that's really what that's all about, is understanding the district. Is there a particular area of your Assembly District that has a higher transient rate than others, and if so, does this particular one fall into that category, for some of these that are sticking out?

Von Tobel: I would say it's pretty much divided west of I-15 and east of I-15. East of I-15 is definitely more transient than west of I-15.

Anderson: I guess the reason I ask that question is from -- not from the testimony given here today, but I know that there are some unusual apartment complexes in Clark County with day-to-day renters, week-to-week renters situation, and we dealt with that situation in the last session. And there's a propensity for that type of housing in this area that would, of course, add to the burden of the Voter Registrar's Department. Maybe that's a question we can ask of them when they come forward. In your analysis of your district, when you were going to run this campaign, did you take that into your consideration in setting up your program for your plan of attack and for the campaign?

Von Tobel: Oh, certainly.

Anderson: Okay. In your mailings -- did you include in your mailing, any of these districts, did you -- when you do your blanket mailing, did you mail to these particular addresses also?

Von Tobel: Yes. In fact, almost every mailing that I did was to the entire district which --

Anderson: Then when you came -- not to interrupt you, I don't want to --

Von Tobel: Well I was just going to say, it may not be cost-effective, but it is a small district. We only have approximately 7,200 registered households, compared to some districts are 20,000. So I, on most of my mailings, mailed to the entire district.

Anderson: Okay. And did you come back and then cull these out so that you didn't repeat mail to those people that you knew didn't exist -- from your earlier analysis when you did the walk?

Von Tobel: I used a mail house, and that's next to impossible because they just pull up computerized lists of labels and it would have cost me more if I'd asked them to pull out certain households than to just mail to the whole list.

Anderson: Did you question the mail house relative to that particular question, since there is a cost factor through utilizing one of those --?

Von Tobel: Yes, I did, and it would have cost me more to have selectively mailed --

Anderson: Okay. I've asked that question myself.

Von Tobel: Yeah. It would have been cost-prohibitive to selectively take out --

Anderson: Thank you.

Spitler: Mrs. Lambert.

Lambert: Thank you. I notice that Mrs. England's exhibit shows two more voters than you have. One you have on the indeterminate list, but one you don't have. 128 West Boston. Eugenia Morris. Do you know anything about that person? She voted early.

Von Tobel: What is the name again?

Lambert: Eugenia Morris, Apartment 1, 128 West Boston, voted early.

Von Tobel: I could look on my walk list. That name does not sound familiar.

Lambert: Well, you may have missed some then.

Von Tobel: Maybe we can add one.

Lambert: Thank you.

Spitler: Mr. Perkins.

Perkins: Thank you, Mr. Chairman. Ms. Von Tobel, as we were going through these precincts, I counted up about 23 of the bad registrations, if you will, that came from people who registered in businesses. Are you aware of any of those businesses that had residential facilities inside them, of any sort, where people might have actually used them to live?

Von Tobel: We pretty much went up and either asked the receptionist or an individual that worked there, if -- is this a residence, and we were always told, no, this is a business. And even the attorneys' offices. A lot of them have taken the older homes in the area and turned them into attorneys' offices. I specifically went up to the

receptionist and asked if he lived there, and she said, no, this is his office.

Perkins: Did you do that in each circumstance where it was a commercial res -- a commercial address?

Von Tobel: Not every single one of them, but for the most part -- if I was there on a Saturday or a Sunday and they were closed, I wasn't able to do that, but if I was there during the week, yes, I went in and asked.

Perkins: My other question would be that six of the votes that I counted were at boarded up buildings. Do you know when those buildings were boarded up?

Von Tobel: We have contacted the city to find out -- because you do have to get a permit to tear down a building, but the permits were not issued to board up the building. And so -- you know, we've attempted to find out when they were, but it's -- until they tear the building down you don't really know. And then you don't know what day the individuals were given their eviction notice to leave.

Perkins: So we don't know whether or not those six voters -- buildings were boarded up after the October 8th deadline to change the registration?

Von Tobel: That's correct.

Perkins: Thank you, Mr. Chairman.

Spitler: Ms. Buckley.

Buckley: Ms. Von Tobel, on the registration out at the vet center, did you inquire -- I know that's a center for homeless veterans, that they receive counseling from, and of course, because many of the homeless do not have a home to register out of, they're permitted to use homeless centers. And it would seem to me from the registration there were eight homeless vets who were using this as an address. Did you inquire with the staff as to that?

Von Tobel: Yes, I inquired as to that. They said many years ago they would allow them to use that address because they were possibly homeless, that they had ceased doing that probably four or five years ago. And he was surprised to find that some were still using that

address, and he was even more surprised to find that they had voted from that address. But I did inquire, because we gave everybody the absolute benefit of the doubt. We were not trying to take away anybody's right to vote at all. We just wanted to find out why they had voted at those addresses. But yes, I did inquire.

Spitler: Mr. Price.

(1745)

Price: Would it be appropriate, or okay, if we asked our legal counsel to check that type of situation out. I was under the impression, and could be dead wrong, but I was under the impression there had been a Supreme Court of the United States decision about people who didn't have fixed addresses, i.e., homeless and so forth, that they could register, even going so far as saying, I live under the overpass on I-15 or something. And I don't know how we would check those types of things out, but could we have our counsel check. Or maybe Kathy knows. [Talk over]

Von Tobel: Could I make a comment?

Price: Yes.

Von Tobel: If you'll recall in my primary race, Dante Duce ran against me in the primary, and it was found out that he listed Two Bonneville as his address. And if you drive up to Two Bonneville it's a dirt lot. And not my campaign or my staff did not file a complaint with the D.A.'s office, somebody else did. I'm not sure who did that -- saying that he was not legally allowed to register or even run from that address. So, if they were able to do that, then I believe it is not appropriate to put down a vacant lot. They certainly didn't let Dante Duce get away with it.

Price: Thank you. Maybe we can check but --

Spitler: The Chair would ask that we take a look at that. Mr. Price, were you through?

Price: Oh, yes.

Spitler: Mr. Hettrick.

Hettrick: Thank you, Mr. Chairman. Ms. Von Tobel, explain to us a little more about the ones you've marked inconclusive. Why are they inconclusive? Are they ones where you couldn't get someone to comment that they weren't there, or were they ones that you felt that the evidence given, that they weren't there, or whatever the situation might be, I don't know, wasn't strong enough? There's a significant number of these that are inconclusive, and it's questionable whether they should have voted as well, I suppose. And that's what your inconclusive is. But why did you decide to not include them as far as the vote count?

Von Tobel: Some of them, when we went back and checked, we discovered they had not voted. Therefore, even though they may have moved long ago, since they didn't vote, it didn't pertain to our case.

[An aside to Mr. Foley] Okay, my attorney just said these did vote. It could be because the management wasn't that clear on how long ago they had moved, or -- all we had was return mail. We hadn't had a chance to either track them down or find the actual address.

We wanted to have as strong a case as possible when we came and it's just difficult to track down a lot of these people -- actually find them. You can go back two or three times, if you never find somebody home, or find a manager to verify it, then we felt they weren't quite as strong as those that we had actually talked to managers. And I hope you can also appreciate how time-consuming it would have been to get an affidavit from every apartment manager. We attempted to get affidavits, but a lot of apartment managers, even with showing them the voter affidavit or the evidence that we had -- we already had their Social Security numbers, their address, their phone number -- they were so hesitant to tell us anything about this person, even though we probably had more information on that individual than they did.

Spitler: Mr. Hettrick.

Hettrick: Thank you Mr. Chairman. I'm looking at Las Vegas 92. And you've marked inconclusive. Las Vegas 92 says, Lulu Bautista, 216 Cleveland Avenue, does not live there. Now, I don't know whether you remember these or not. You have any idea?

Von Tobel: Oh, I've lived and breathed this for -- I remember these.

Hettrick: Sure.

Von Tobel: Lulu -- we weren't able to talk to an apartment manager, the person that lives there now said Lulu doesn't live there any longer. But we didn't feel that was strong enough. It's better to talk to an apartment manager that actually has records and know that they no longer live there.

Hettrick: How about the next one that says, vacant lot? That seems --

Von Tobel: Mildred Epley. There was some question on Mildred's because she was registered at the last minute. Her registration was actually, I think, September 5th, yet it seemed to me that was a vacant lot when I was campaigning in August. And rather than trying to figure out, was it my records or hers, we didn't bring that one into it.

Hettrick: I just would have everybody look at that. I know that the audience doesn't have it, but I see two different ones -- I presume 2200 South Las Vegas Boulevard is an apartment building. I see two different names, both from there. Both say, do not live there. And then I see one more address does not exist.

Von Tobel: Okay.

Spitler: And I'd like to do a follow-up question on this. Since we don't have affidavits indicating, you know, that someone has sworn that that person doesn't live there, do you have a recap of the number of Republicans, Democrats and non-partisans in this particular package? I would just sort of --

Von Tobel: The abstract? Or just --

Spitler: No, just how many here --

Von Tobel: Oh --

Spitler: I notice you have. Oh --

Von Tobel: We didn't break it down.

Spitler: It's broken down on the top --

Von Tobel: Well it is, yeah, we have individually broken it down.

Spitler: In the absence of a sworn affidavit, I'm wondering if someone might -- you know, you not appearing in front of someone's door in an official capacity, would someone be bound to legally tell you that so and so lives here or doesn't live here?

Von Tobel: No.

Spitler: So, really, in society as we live in today, where you may have alternate families living together, two or three people of different perhaps, in one household, and I know part of the district you're talking about is a low economic area, and I'm wondering if someone would just willingly tell someone who walks up to the door, yes, Lulu lives here, or no, they don't. What reasonable degrees of assurity should we trust that this, in fact, truth, absent the affidavits?

Von Tobel: People at households have been very willing and open to talk to us. To the point where a lot of them have read in the newspaper that I'm challenging the race. I introduce myself, I tell them I'm just out investigating if these individuals live here or not. They've been very open. It's been more the apartment managers want to protect their residents. But when, oftentimes when I lay my book in front of them, the walk list that shows the information, if they realize I've got that much information on a person, they then volunteer it also. I've been surprised how many of them have been open and invited us in and chatted. It has surprised me, because I don't think I'd invite a stranger into my home. But they've been very open.

Spitler: But the record that you provide to the committee today is not supported by sworn affidavits or anything like that?

Von Tobel: No, it is not.

Spitler: Okay. Ms. Tiffany.

Tiffany: Thank you, Mr. Spitler. It's just kind of a comment, and I think maybe to the committee more. You know, I'm kinda concerned. It might go back to election procedures, too. I think Kathy's done an outstanding job trying to look for discrepancies in her race. And between November 8th and today, unless I had a team of three thousand, with what you're asking for -- were asking for -- for proof,

I don't even think an army could do that. So that may be something. And I'm listening to all this. I know what she's done. I've walked my district myself, too. I know what people tell you. And I can just sense it from her, too. But my goodness, to get sworn affidavits from everybody that exists so there's not a question of doubt about proof on this, we don't give anybody enough time or staff or money or anything else to do this, so it kind of makes a challenge difficult. Real difficult.

Spitler:

I think you probably bring up a good point, but I would indicate that the burden of proof rests with the challenger, and that's the way the laws are stated today. And going back, as I discussed with Mr. Price, the burden of proof has to be shown that irregularities existed to the extent that it changed the outcome of the election. And I don't feel comfortable with someone --. While I may well trust Ms. Von Tobel, she's speaking for someone else. I don't know that other person. And I do think -- and, you know, I happen to also represent a district with, I think, one of the highest concentrations of apartments in the State of Nevada, and I had an opponent who did a mailing leaving off several apartment numbers. Everything came back. They took down 366 challenges in my race. It took me four days, five people calling people, simply because the first-class mail returned did not have an apartment number on it. And if you're familiar with my district, all you have to do is look at 707 East Flamingo, 1065 East Flamingo, if it doesn't have an apartment number, it comes back because these are enormous apartment units. And I had to take and stop only because, to go look into that would -- because senior citizens were calling me, saying, I got a letter from the Election Department -- and I have to tell you, it's a frightening letter. And it doesn't tell you a whole lot. The thing that's attached to it is -- you don't have to print the name of the person challenging. Some of them we couldn't even read. It had to be someone from a -- living in that precinct, with knowledge that that person didn't live there. So the people challenged couldn't even go face the person, telling the Election Department that they didn't live there, which they did. And now they say they'll just stay home and not vote. I share that only because I think it's extremely important what Kathy's bringing to us. I think there's some flaws in here that we need to look at, but to overturn this race, we must rely on burden of proof. And that's what your challenge is.

Von Tobel: Yes. And I was well aware of that the day I decided to challenge the race.

Spitler: Do you feel, Ms. Von Tobel, that this is -- what you're preparing and giving to us is evidence that we could sleep well every night, saying, I took this booklet and I unseated an incumbent duly elected, or certified elected by the Clark County Election Department. Can I sleep well at night thinking that this is sworn to by people who are making these statements? Or could you?

Von Tobel: I could because I've lived and breathed it. You haven't been out walking with me. I could.

Spitler: Well, continue, because you're going to have to establish that you've met the burden of proof to the committee.

Von Tobel: Okay. One point I'd like to make. There was a difference between your opponent and myself in pre-challenging. Not only did I walk those addresses, I did a first-class mail. I believe the individual that was running against you only did a first-class mailing. I physically walked every one and had volunteers out walking. I wouldn't have pre-challenged anybody without doing both steps. And I believe that's why the Election Department didn't get any complaints, or written complaints from me, and the one individual that did call me, I immediately rectified it.

Under the malfeasance charge, statute number 293.530, correction of registration lists, cancellation of affidavit of registration, number 2., it reads, "A county clerk may, with the consent of the Board of County Commissioners, make investigations of registration in the county by census, by house-to-house canvas, or by any other method." This is the method that we've used. There's no other method when you're talking about an election. It's pretty darn simple. After the election -- like I said, it's been a public -- much easier to find out who shouldn't have voted after they have voted. You can go out and register anybody that you want, but you won't know how that election's going to turn out 'till after the fact. And then you start backtracking.

Spitler: Could you repeat the citation, please. Mrs. Lambert asked if you could repeat the citation.

Lambert: Two, nine, three point --

Von Tobel: -- five, three, O.

Spitler: Thank you.

Von Tobel: And I certainly have not taken this lightly. I know the burden of proof is -- rests with us. And I appreciate Assemblywoman Tiffany's comment, you know, the time, the time frame. We haven't had a lot of time, and that is why a lot of people have talked about the last minute filing for the contest. I was given incorrect information to begin with. I was told it was Thursday. I mentioned, well that's Thanksgiving. I was then told, well then it's Wednesday. I was putting together what I felt was a case, to even see if I had a case. I was using the two weeks after the election to see if I even had a case. And I felt I could not live with myself if I hadn't brought this forward.

Spitler: Yes, Mr. Close.

Close: Thank you, Mr. Chairman. I believe that I could sleep knowing that Kathy has done exactly as she has said. That she has been out there and provided that documentation. But I think she has an even a bigger, insurmountable wall, and Kathy, can you tell me that those people you've identified here, who they voted for?

Von Tobel: No. I can't do that.

Close: And that's the challenge. That -- there is the problem. No matter how hard she works, no matter how hard she goes out there and has more people to work on, there is no way, though, that she can identify how they voted, which is our challenge here.

Von Tobel: I can give you one example of -- mathematically, with simple math, how you can figure some of this out. Where I held my press conference with Las Vegas '92. I had -- we have a primary, because I had a candidate that ran against me in primary, and that precinct is very small. I received 24 votes and Dante Duce received one vote in Las Vegas '92 in the primary. In the general, I received 25 votes and Chris Giunchigliani received 111 votes. If you use simple math that would basically tell me the Republicans voted for me, the

Democrats voted for Chris. And I don't think you can get much simpler than that.

The percentages -- and we do have the abstract. In the precinct that we're talking about, it wasn't a two to one at all. It was sometimes as high as 80 percent, 20 percent. The percentage was much, much higher for Chris. And if you use simple math, you can figure out that if they were a Democrat they pretty much voted for Chris and Republican voted for me.

Spitler: Mr. Perkins.

Perkins: I'm trying to understand things. I'm trying to understand the premise that you're putting forward here in regards to Las Vegas '92. Would that mean that of the contested, or the suspicious, registrations that you've got on your list here in '92, that if they were Democrat and they shouldn't've voted, then those numbers should come from off of Chris's total, and if they were Republican and shouldn't've voted, they should come off of your total?

Von Tobel: I'm using that as an example. And as you know, there are Republicans that voted in that precinct. So obviously, those wouldn't come off of Chris if we used that formula. Yet that formula, if you used it in all the other precincts, she had a much higher tally in these precincts than I did. She had a higher tally in these precincts than any precinct west of I-15.

Perkins: In Las Vegas '92 it was split even/even. It was three Republicans and three Democrats.

Von Tobel: Right.

Perkins: One more question, to follow up on something the Chairman put forward earlier. In my paying life I do police work. It's not uncommon for me to go to somebody's door and knock on it and ask if Joe Smith's there, and for somebody to tell me, no, they're not here. You know, I recognize --

[General laughter]

Von Tobel: I don't think I'm quite as threatening as you are.

Perkins: I recognize that, you know, you don't show up in that particular capacity, and then after you identify yourself it may change the rapport somewhat. But the point that I'm trying to make is that people are -- particularly in the '90s, uncommonly suspicious of strangers. You've given instances where they've actually taken you in that surprised you, as well. But without the affidavits that the Chair's talking about, and I recognize that's a super burden to come up with, we don't know whether or not -- or we -- I would have a harder time believing whether or not those people were actually telling you the truth, or whether they had a rent-by-the-week apartment and had four or five of their friends living in one room. And it often happens in the lower economic areas, that they didn't want to disclose to the manager. And for those reasons, it would be really difficult to, you know, to believe those apartment managers or some of those people that we talked to without a sworn affidavit. Thank you, Mr. Chairman.

Spitler: Mr. Hettrick.

Hettrick: Thank you, Mr. Chairman. I would just comment to Mr. Perkins, I'm convinced he would get more no's than would Ms. Von Tobel. But I think beyond that, I think the very packet that they bring us where they themselves disqualify dozens of people on an inconclusive basis, lends some weight to the fact that they have done this in the most fair, straightforward method that they possibly could, and where in doubt, they've eliminated it. So -- I mean, she can't be absolutely conclusive on anything, but neither could we.

The question on the voting that Mr. Close brings up is a good question. By the same token, we can't prove that they didn't vote for one side or the other. And all we can do -- you know, this is a two-way street, and while the burden of proof remains -- and 124 votes, I believe -- my point is simply that when you see someone bring a package that's a fairly easy thing to do would have been to pull the inconclusives and made it look like every one they ever checked on was absolutely faulty and wrong and -- you know -- they didn't do that. So, you know, I'm comfortable with what they've presented in terms of what it is. That doesn't solve the burden of proof issue, but it -- I am comfortable, personally, with what they've brought.

Spitler: Mr. Price.

Price:

Thank you, Mr. Chairman. I'm not really sure which of two or three people that this question should be asked, but I'll start with Kathy. And it concerns the felons. Kind of by accident I -- anyway had someone who had been involved, or is involved, with the Parole Board -- now we're talking about state felons here, not federal -- and it came to my attention that when a felon -- and of course, they would still be a felon, even after they're paroled -- but when a felon is paroled in our state, at least, that they are normally -- and that's what I was told and there may be some exceptions -- but normally this document is signed, which restores their civil rights. You're shaking your head, no. I got this from the Parole Board, okay. So -- and it refers to a section of law and so I looked at the section of law, and even my colleague next to me here this morning, we were looking at it, so I asked our legal division to quickly explain to me what restoration of civil rights are.

(2586)

And may I read into the record, because it's very short, the portion of the law, because I -- my real question, the final question is, how do you know just because someone is an ex-felon, whether they've had their rights restored or not. I mean, I -- and you may be able to answer that, but I have a note from our legal counsel who indicates that this document that was FAXED over from the Parole Board and the representation, as I say, was made to me -- and particularly in past years, that any convicted person who had done all the right things when they were in prison, and so forth and so forth, and were granted parole, that it was pretty normal -- in fact, it would be an exception to the rule that the Parole Board, which is provided for in law -- it says -- and it's speaking the Parole Board -- it says, "The Parole Board may restore a paroled prisoner his civil rights and such restoration to take effect after the expiration of his parole." So he could be on parole for two, five or I think the maximum is five years. But they would automatically get their rights back.

And so we were kind of discussing what the civil rights mean, and I got a note from our legal department that says, under the constitution it mentions the part, it says, this provision characterizing the right to vote is a civil right -- therefore, I believe -- now this is just a quick -- you understand -- and not an official thing -- but I believe that if a felon's civil rights have been restored by the Board of Parole Commissioners and any waiting period has passed, then the right to vote has been restored.

So I -- did you all figure out how to tell if an ex-felon's rights to vote had actually been restored?

Von Tobel: What I've been told already, if you recall, we started with a figure of 40, and it has been determined that some did have their rights restored, and that's why we're down to the figure, I believe, of 29 and there may be an additional four. And so that has already been addressed.

Price: Okay. So those would be the people that hadn't filled out the years -- just from what you found -- the number of years up to five to complete their parole.

Von Tobel: Unfortunately, I haven't been informed too much about this, because we were told without a court order we couldn't talk to them, we couldn't know who they were, we couldn't be given much information. As a matter of fact, I believe I found out from Jon Ralston about the felons. It wasn't even given to us.

[General laughter and comments]

Spitler: Ms. Von Tobel, would it be appropriate to take a break now? Are you close to concluding?

Von Tobel: I think it would be very appropriate.

Spitler: Okay. We'll take a 15 minute break. Mrs. Lambert, what is the stroke of your clock?

Lambert: It's twenty-five to four.

Spitler: At ten to four we'll reconvene.

[Break from 3:35 p.m. to 3:56 p.m. A roll call was taken. All members present.]

(3721)

Lambert: There are a couple more people that have signed the sign-in sheet saying they are representing Kathy Von Tobel. A Michael Epling and a Jess Foster. Would they like to testify?

Foley: No, that was passed around at the end of the last break, and they said everybody needed to sign it, so those folks just signed it.

Lambert: No one indicated -- generally indicate whether they wanted to speak or not, and no one did, so I thought I'd ask.

Foley: They're not intending to testify.

England: Madam Chair, on that note I didn't know where that list is, but we need to add some people to it.

Lambert: There's another one right over there that you can add to.

Kathy, oh, I'm sorry I thought you were through. I apologize.

Von Tobel: If I could have a few more minutes.

Lambert: Certainly.

Von Tobel: I have some transparencies for the overhead -- if I could show those.

[Note: These were not left with the secretary as exhibits.]

Von Tobel: This is the affidavit we received from Gertrude Taves who was assisted in registering to vote by Chris Giunchigliani.

Lambert: I'm sorry, we spent a lot of time this morning, and I need to ask you a couple of questions. Did this person vote?

Von Tobel: Yes.

Lambert: The law says that even though -- if there were or were not irregularities on the affidavit of registration, the registration is still valid. Does this count towards any of the votes, one way or the other?

Von Tobel: It didn't count towards the votes because they weren't -- the individual that registers to vote is not affected. The law just affects the individual that assisted, and did not sign the form. So the voter is not held liable.

Lambert: You've heard many times, the burden of proof that this committee is bound by, and that is, were there illegal votes that would have changed the outcome of the election? Malfeasance of Election Board officers -- you probably know it as well as we do.

Von Tobel: Right.

Lambert: And I just wondered where this fit in.

Von Tobel: Just to clarify one more time, because we feel this is such an important area of our investigation, it clearly ties in not only where the Culinary were out registering individuals, but Chris Giunchigliani herself was out registering individuals and we just wanted to show it on the overhead, if we could.

Lambert: Mr. Anderson.

Anderson: Ms. Von Tobel, did you not register? Did your campaign not conduct registration, also?

Von Tobel: I had a registrar of voters. [Talk over]

Anderson: Somebody had gone through training, so people were out there doing this also? I mean --

Von Tobel: We didn't -- I had an actual registrar.

Anderson: Okay. Thank you.

Lambert: If you could keep it very brief, because I fail to see how it pertains to this -- what we're doing.

Von Tobel: Okay.

We just wanted to show -- we do have the burden of proof. We're telling you that Chris Giunchigliani filled this out. I just wanted to show her reporting that has her handwriting on it, versus Gertrude's affidavit with Chris's handwriting, so it shows the handwriting does match. Just for your clarification.

And I have one other item. This is the statute that talks about registration of voters by mail, and we've highlighted the areas -- section 10 and 13 that pertain to filling out a form, and we just had it enlarged so it was easier to read.

Lambert: NRS 293.5325, section 10, Mr. Price.

Von Tobel: One other point I want to make. I know Kathryn Ferguson will have a chance to talk. During the course of my investigation the communication breakdown in the Election Department -- I don't know if I've stressed some of the things that occurred. It got to the point where -- and I know Jon Ralston doesn't want his name brought in a third time -- but I got a call from him asking me about a memo that had been sent to me, and it dawned on me I hadn't even received that memo. It was from Kathryn Ferguson to me, and he was asking me about it. It was Kathryn Ferguson stating that she would not be deposed by my attorney without a legislative subpoena. And this was the first I'd heard about it, and I was a little irritated, and I contacted Kathryn Ferguson at the Election Department, and she said, well, it was just an oversight, that Jon Ralston had requested all the information on the case and so she bundled everything up and sent it off to him. However, I had been at the Election Department from that morning until probably 2:30 in the afternoon, when I left to pick up my son and got a call and found out about this memo.

I think that shows you what the breakdown that had occurred in communication. And I had a confrontation with Kathryn Ferguson a couple days later in the Election Department room just outside Mary Moore's office, and told her I didn't appreciate memos being given to the media before they were even given to me, especially when it was directly related to my case, and I would appreciate every piece of evidence that was requested or they had come up with that pertained to my case be given to me. And I was able to get this evidence after that time, but it was clearly evident to me that they were not cooperating. And she apologized and said it was not right, that this shouldn't have taken place. So this is what I was dealing with when I was at the Election Department.

And I don't have anything else at this time. If there are any other questions.

Lambert: Are there any questions? of Mrs. Von Tobel? There are no questions. Thank you.

Von Tobel: Thank you.

Foley: The only other witnesses that I would call in our case are those that the committee, as I understand, intends to call, those being Dale Erquiaga, Kathryn Ferguson and Chris Giunchigliani.

Lambert: Well then, if we could call Kathryn Ferguson.

England: Madam Chair, in order to allow it to be easier for Ms. Ferguson to testify, because she has a number of papers and things, I will vacate, or we will vacate this table to allow her to sit and have her papers spread in front of her. I think it's easier than having her stand at the podium. Would that be permissible?

Lambert: That's certainly permissible. Thank you. Whatever is convenient for the witness.

Could you supply copies of the overheads? Paper copies for our minutes?

[Although these were requested, no copies were submitted to the secretary.]

Are you all set?

(4118)

Ferguson: Yes.

Lambert: If you could raise your right hand. Do you solemnly swear or affirm, under the pains and penalties of perjury, that the testimony and evidence that you give in these proceedings will be the truth, the whole truth and nothing but the truth, and that you will answer all questions presented to you to the best of your ability and personal knowledge.

Ferguson: I do.

Lambert: Could you state your name and your address and your occupation, for the record, please.

Ferguson: My name is Kathryn Ferguson, I live at 6500 Vegas Drive, in Las Vegas, Nevada, 89108. I'm the Registrar of Voters for Clark County.

Lambert: Thank you.

Ferguson: You're welcome. There are several things I would like to set the record straight on, initially. Number one was when Mr. Foley originally approached me, not in person, but one of his

representatives, in my office, inquiring whether he could take my deposition and the deposition of members of my staff, I told them, no problem, I would be more than willing to do that. However, in checking with the District Attorney, my Assistant District Attorney, Mary Miller, she informed me that because of the nature of these proceedings, the fact that this was not a court of law, rules of evidence don't apply, that Chris Giunchigliani's representatives wouldn't have equal access, that it would be better if I only appeared before this committee in testimony and that I not give depositions. So that is the only reason that I declined to give my deposition.

And the fact that that memorandum -- after talking with Mary Miller that next day, and typing up my response to Kathy Von Tobel, I had a temporary who had just come to work for me the day before, and I gave her the memo to give to Kathy, who was in and out of my office pretty much since before Thanksgiving. And she put it in the wrong box out at the reception area, to go out with the County delivery person. So it didn't go directly to Ms. Von Tobel. She did not know who Ms. Von Tobel was at that time. But in the meantime, Jon Ralston called me on the phone directly, and asked me for copies of what was in that file, and that -- as I typed the letter and gave it to my temporary, that copy was put in the file. So I personally FAXED to him everything that was in the file. So it was not an indication of a breakdown in any sort of communications with my department and Ms. Von Tobel and her staff.

Secondly, with regard to the 66 votes that have been said to be Culinary Union votes, the fact is that Ms. Von Tobel came to my office to meet with me before filing her election contest, and expressed several concerns. On this particular date, I believe it was November the 16th or the 19th, I'm not sure, but several members of my staff were with me and she had several people with her. She expressed some concerns about the busing of people to the Election Department for early voting. And I -- and she was concerned that perhaps certain precincts had been passed onto those buses by the Union. It was at my suggestion to her that we could analyze the early voting rosters of everyone that voted that day, which happened to have been November 2, and I could let her know how many people voted in each precinct, if she was concerned about that. We would be glad to do that. More than glad to do that. I said, would you like for me to do that for you, and she said, yes. That is why that document was produced. I remember earlier it was stated why

was this produced, what was the concern, why was Kathryn Ferguson concerned? The fact is, I did it at her request. And I did it to show what I thought would come out of that, and in fact, nothing was passed on those buses, and that, in fact, in my opinion, was illustrated by those results.

That voting day began at 8:00 a.m. and finished at 8:00 p.m. That's 12 hours of voting, and those 66 votes represent every vote that was cast in District 9 that entire day. That does not mean that those people got off of those two buses. The Union had called my department a couple of weeks ahead of time to inform us that they would be bringing over two buses on November 2nd, asking us, would that be convenient. They didn't want to come at a time that was not convenient for us. So we did know that they were coming that day, and they brought one in the morning and one in the afternoon.

It is also not true that I ever said to Ms. Von Tobel that Union officials stood behind voters instructing them how to vote. I would not allow that. That is against the law. We do not allow people to enter the voting area with voters and tell them how to vote. In fact, when Ms. Von Tobel raised this question, I gave her an example of a man to my knowledge, who had nothing to do with the Union, who they might have had to have removed from the Department twice because he was attempting to go in and assist voters in voting, and I had a couple of rather loud discussions with him personally, removed him from the area, had another confrontation with him out at Nuclear Plaza when we did early voting out there, but I can assure you we do not allow anyone to go into the voting area with a voter. We don't allow husbands to go in with their wives and tell them how to vote, and that didn't happen, and I never said that it did.

So, right there, those, to my mind are two serious misrepresentations that have occurred here. And I believe there's some people here who were on those buses who also witnessed that early voting at the time, today, if you wanted to hear from them, as well.

When I took over the job as Registrar of Voters, knowing that we always have problems keeping addresses current and the voter's address is what drives the whole election system and determines who you're eligible to vote for and whether you're eligible to vote, I took it upon myself to do something that had never been done here

before, and that is to mail a card to every active registered voter on file, so that I could determine who had current addresses and who did not. That was a non-forwardable mailing, it was conducted by me on March 1, 1994. Of the 360 some odd thousand cards that we mailed out, we got back some sixty thousand as being non-deliverable because the voters did not live at that address.

Within the law, we then sent out a forwardable notice to those addresses telling the voters that mail had been returned to us, and they had 15 days within which to update their address with us, or they will be canceled. We actually sent out two notices, one on April 1st, one on May 1st to all these registered voters. Through this process, we received more than 20,000 updates of addresses from voters who had moved and hadn't updated their address. So we cleaned up the files of some 20,000 voters. We ended up inactivating 40,000 some odd voters before the elections -- before the primary. I did this to clean up the addresses and knowing that the National Voter Registration Act was going into effect January 1, 1995, after which time you can no longer purge for non-voting, as you have done here in Nevada, before this time. That's how you've cleaned your rolls up. During presidential elections, if someone didn't vote, then they were removed from the rolls. You can no longer do that.

So that had been done from '92 elections before I came. So I used this as an instrument of cleaning up the files. And those inactive voters were not eligible to vote, period -- unless we had made an error in inactivating them. And because this was the first time we did that, and because the National Voter Registration Act prevents my removing anyone from the rolls, even if I get this kind of a notice that they no longer live there, for up to four years now, I must keep them on the rolls.

So, I can't purge them, and I will have to take that list of inactive voters to the polls on election day, and if they show up to vote, the Secretary of State will tell me how it is that I let them vote. It's up to the Secretary of State as to whether we send them all down to the Election Department, make them go to the trouble to go down there and vote a limited ballot only, or what. And as far as I know right now, that has not been determined. But, for four years I will carry both an active roll and an inactive roll of voters to the poll. So that's another reason I did this.

People who came to the election and were on the inactive list, I think Kathy Von Tobel pointed out that some had -- were allowed to vote. If they produced evidence that they still lived at the address of record, and that either the post office or we had made a mistake, which of course we do -- sometimes do -- then they were allowed to vote, but they had to sign an oath swearing to the fact that they did live at that address of record. So if she has evidence of people who swore to that and wants to turn that into me, it can be turned into the District Attorney, that they swore they lived somewhere they didn't and voted. I mean, we do have that option. Those names have not been given to me, by the way.

With regard to the felonies, I came here from Texas where we have systems in place to deal with keeping felons off the voter registration rolls. There we do it through the courts when they are convicted -- filed conviction -- we are notified through the computer system. I have people on my staff, both from Maryland, California, where they also have systems in place, whereby they keep felons off the rolls. I did not realize that there was no place -- nothing in effect here, until, during candidate filing, you may remember who -- I do not -- but somebody filed for office, and some television station uncovered the fact that they had had a prior felony conviction, and came and interviewed me and wanted to know why didn't I know that. Why didn't I identify that. And I immediately began questioning my staff. We do identify felons on our rolls, don't we? How do we do that? And I've got memos here that will show you I started this in July. We contacted the jury department. No, they've never done that.

Eventually -- I tried again working on it immediately, and I continued to do so. It required an inter-local agency agreement with us, with Metro. I had to write to all of the individual police departments -- Mesquite, Boulder City -- to get their permission for Metro to give me that information as the Registrar of Voters. But I'm not allowed to make that known to anyone else, such as Kathy Von Tobel, who requested knowing the names of those felons, or alleged felons.

So we began working on this. It required Metro to work with these other agencies and get that information from their file in a format that our computer department in Clark County could then work into their schedule and develop a computer program to then give me a list which we would then hand check every single name on it against our files, because we wanted to move with caution, being this was the

first time this was done, and not disenfranchise anyone from voting erroneously.

So we got four fields of data from them on each of the alleged felons on the role, and then we required that to match our files exactly on three of the four fields, before we sent out a letter.

We received this file from Metro two weeks before the election. We did not have time to move with all caution before the election. When this came out, when we first started looking into it in July, I know it was in the newspaper that we were doing this, that I said we were moving forward, that we did not think we had time to accomplish it by the general election, but we would if we possibly could, but we knew that we would have it done before the municipal elections. And that is how we progressed on this front.

When Kathy Von Tobel filed her challenge, I mean, you'll notice that no mention of felons was made in that, so obviously, that wasn't part of her reason for challenging this election. As have been pointed out, there were, at last, that I knew from Metro, 29 cases of felons who had voted in District 9 in this election who shouldn't have. And five cases that they were still investigating. Because you asked the question, Mr. Price, it's the state that convicts them of the felony is the one who must restore their rights. It's whatever that state's laws are. So it's up to them to get their rights restored from their state, to get that paperwork to me or to Metro to show that -- and then we would reactivate them.

So we sent out some -- we sent out 1,987 letters to alleged felons. There were file errors. Metro showed some as having been convicted of felons who had subsequently had it reduced to a misdemeanor, so there were some errors there. As we get word from them that this is not correct, we give it back to Metro, they investigate it on a case-by-case, state-by-state basis, and then they let us know the final result.

And that -- now we are set up to do this on a monthly basis, and we will continue to do so. I can only say anytime anything is brought to my attention, I address it as quickly as I can. I believe Ms. Von Tobel said that when she came in and met with me, and told me that somebody was registered at a business address, I wrote them a letter and that is what I do. When she called her press conference

on January 12th and announced three people that were non-citizens were registered to vote, I, through reading the paper, sent letters to those three non-citizens on January 12th. And that is how I do. When she and Helen Foley came in and met with me prior to the election about having walked their district, and the concerns they had, we sat down with them and instructed them how to file written challenges. And out of that 117 challenges were filed and processed by us, sent with the poll book. And of those 117, only four voters presented themselves to vote. I think that does show that those were valid challenges and those people have probably moved on.

But in the case of noncitizens, that is something that must be brought to my attention or else I would be put in the position of, you know, looking at foreign-sounding names, you know, suspiciously or whatever. There's nothing in place for me to check that someone is a citizen or not, unless someone brings it to my attention. You have to, at some point, assume that when someone signs a form that says, I do hereby solemnly swear these things are true, and to do so and lie is a felony. You know, at some point you take their word for that.

Lambert: Mr. Price has a question.

Price: Thank you. And this is staying with the felon thing. I, in sort of a round-about way, I would say, had contact with three people on that long list. And contact is stretching just a little bit, because one of them was a guy that called in on a local talk radio show, and was -- he had been contacted, and he was talking -- he was apparently one of the ones who had pleaded down and had been charged with a felony, and then eventually it was something less. But he had been contacted. The other two were people that I had known for many years and were contacted.

But there's something -- a question I have and I'm not sure which way I should ask, but I will ask you first. My impression from the discussion with them, was that their contact, the letter which may have been yours, and it came to them, but the impression that I got was that the letter was from Ms. Von Tobel's campaign somehow. In your letter -- now I could be wrong, and I don't know -- but did your letter mention any specific, like would you have mentioned that the question had been raised by that particular campaign? or maybe they --

Ferguson: No.

Price: -- you wouldn't be the right one to ask -- sent out their own letter and if that was the case, I'm wondering how the names were, you know, since it's private, how the names came out.

Ferguson: No, my -- I did not give those names out, and will not. My letter said, because the Election Department has received information from the proper authorities that indicates you were convicted of a felony in the past, your voter registration has been canceled. You will not be able to register to vote until you provide proof at the Election Department that your civil rights have been restored pursuant to Nevada Constitution, Article 2, Section 1. If you have any questions, please call.

Price: So you didn't cite any specific case, as far as the challenge or anything of that nature, so that's good.

Ferguson: Not at all.

Price: That answers my question. Okay.

Ferguson: With regard to the communications with the Von Tobel people, from the time that they came and met with me, as I've said, my staff has been readily available to them, has worked very hard to get whatever information that they needed. When Kathy alluded to the fact that I said she wanted to show me these problems in her district and would I walk with her, and I said I didn't see any problem with my walking with her. I didn't. You know, if she had some real problems and she could show me and then we could figure out a way we could address those, that would be fine. Once it became apparent that what, in fact, she was doing was filing a contest of elections, at that point it's not up for me to be involved in the fact gathering, other than to make my files available to her. So that is why I didn't go to walk the district with her at that time, and for no other reason.

I would like to say that after she filed the contest, and I was out of town when she did, and after we had met and discussed all of these things, I was of the opinion that she would not file a contest, because of the various things that we had looked at, and what we had found. But once she did, and then she and Helen Foley came to my office to meet with me and to request certain things -- heretofore

I had not asked that anything be in writing, but again, Mary Miller, Assistant District Attorney, had said, because of the forum that this contest of the -- an Assembly office presents to you, you need to be -- make sure that everything is documented because, again, there is no courtroom here, and if Chris Giunchigliani needs to be able to determine what is going on here, you need a paper trail. So I asked that everything be done in paper. And the Democratic Assembly Caucus sent me a request to receipt everything that went into that file and then Kathy, as she stated, when we had our conversation after the letter saying that I would not submit to depositions, told me that she wanted a copy of everything that went in that file, and so I set that up as she stated, through my assistant at the time, Vicki Chan who was a temporary, but she was just set up as the point of contact. Because what would happen is that they would be going to different people in my department asking them questions. And I wanted them to come through me and we also were short staffed because of the holidays and we have other things to do, such as the city elections that we're currently working on.

So I wanted -- some of these affidavits had not even been refiled, were still sitting in piles, so we needed to be able to do them sort of in a batch basis -- allow them to access the records that they could themselves, but, on the other hand, pull everything from these books that we have to take apart on a daily basis to make them available to them the next morning. So we needed some organization whereby we could deal with this and still get our other work done. And we proceeded in that fashion.

In this particular meeting, though, when Helen Foley asked for the hourly posting logs, which, as you know, is a new law that was passed in '93 whereby the parties wanted to know who voted each hour -- it's quite a problem, I might add. This is the first time we did it. Frankly, I have to hire a person to sit at every single table to do this, it takes so much time. But I told her, at the time, I'm not sure if we will have all of those, because those are not part of our permanent election records, we're not required to keep them, we did not give specific instructions to election board officers as to what to do with these, you know, but I will go through and get you the ones I have. And she said, I hope you have not destroyed evidence, to me accusingly. And then began to talk about how a former Assistant Registrar, Doug Leavitt, lost his job for giving legal advice. When I responded that I didn't think these were evidence, really,

because they weren't part of the election records, but if we had them, she would certainly have access to them. And I felt that my job was threatened in that meeting. So, if communications deteriorated at all, I would say it came about from that meeting, but it was not, in any way, reflected by lack of cooperation from my staff to all the fact-gathering that has gone on here.

Anderson: Thank you very much. I guess I'm being a little impatient. I'd like to bring you to another point that was raised, and you haven't yet talked about, and that's a little bit about the form itself -- of the registration form. And you haven't commented on that, and I don't know whether you're planning on that in your testimony. If you are, I'll withhold my questions 'till then.

Ferguson: Well, that assisting in filling out the form?

Anderson: Well, I'm looking for a little bit about the procedure within your office in the form -- maybe if I could ask some questions of you, that would be helpful and relative to the form.

Ferguson: Sure.

Anderson: We were provided, in these binders, several different registration forms. Now, this is a standardized form that you use throughout the Washoe -- excuse me -- Clark County --

Ferguson: The mail-in registration form, is that the one --

Anderson: Yes.

Ferguson: -- that the one you're talking about.

Anderson: Yes.

Ferguson: That's the one we use for mail-ins, yes.

Anderson: We were also provided with a list -- and I know you don't have this -- it's letter C in our document book, which shows the assignment of some of these by your department, apparently? The -- if you could provide that to her. It's that tag C.

Ferguson: This is what you're speaking about?

Anderson: Yes, that's the one. If you'll look at the date 8/30.

Ferguson: Uh-huh.

Anderson: The ones dated -- there's several there on 8/30 and I get on 8/31 where it says, counter, registration counter. Am I to understand that those particular numbered sequence documents were used at the counter in the registrar's office?

Ferguson: I assume that's these. I'm not -- I can't answer that directly, but that certainly [talk over] --

Anderson: -- is there

Ferguson: -- certainly makes sense to me. I can inquire and find that answer for you.

Anderson: Is there a difference between the registration form that you use on your counter if somebody walks in and between the registration form that is used in the mail-in?

Ferguson: Oh, yes, there is. Right.

Anderson: Okay. And are there -- is there any qualifications that you have to go through to use, or to pick up a packet of these mail-in voter registration applications?

Ferguson: Yes. Let me give you -- I have prepared a copy of all of our forms in the Department, as well as the form letters, for you, for the committee (Exhibit H. This exhibit may be viewed in the Legislative Counsel Bureau Research Library.), and I can show you what form we do use. The Secretary of State has a form where if you request more than 50, you're supposed to fill out this form. We actually have everyone that requests any mail-in forms to fill out the form. And it says that you will comply with the law.

Anderson: And those are public documents, and were made available to Ms. Von Tobel and her attorney?

Ferguson: Yes. We track all of the mail forms that go out. Pardon me. We try not to limit the number that we give out, because we think it's important to register voters, only by what we have on hand. Like if

we have a limited supply on hand and a limited turnaround time, then we would look at limiting how many we give out. But otherwise we try to make them available on a requested basis. But we track all of them. Who picked them up. And, we do not train people who pick up mail-in registration forms, at all. And I do think that this has pointed out something that I need to change in my procedures, and I will be changing that, and that is we will -- I will make out an explanation about the assisting someone in filling out a mail-in form, and the law. We do give the law. In fact, we have a booklet that we give to people that take these, about mail-in forms. But I will clarify the assisting portion of that.

Anderson: I guess my question comes back to the fact that I've seen mail-in registration forms sitting in public buildings --

Ferguson: Yes.

Anderson: -- where people could just pick one up and walk out the door with it and no one -- children could pick one up and use them for airplanes or whatever purpose. And I've seen them used for that too. There is no way of keeping track of those once they've been assigned, right?

Ferguson: Well, but we know where they were assigned. If it was to the Rainbow Library or whatever.

Anderson: But you don't close in and then repick them all back up at the end of the election cycle.

Ferguson: For the public places where we place them, no. We keep those stocked on a regular basis. So -- but --

Anderson: Like a public library --

Ferguson: -- but other mail-in applications picked up by individuals, we require them to be returned to us and we have a warning letter in it. Let me give you this set of forms and form letters (Exhibit H).

Anderson: Well --

Ferguson: If you're interested.

Anderson: I am interested, and I don't want to say I'm not, because I am. I just don't want to take up an enormous amount of time of the committee, and I thank the committee chair for the indulgence of trying to get to -- the question I'm trying to get to is whether there's -- the difference between an actual registrar and the people who pick up, train and the fact that you have the availability of picking up a mail-in application without going through any kind of training, as long as it's less than 50.

Ferguson: Field registrars in Clark County are designated by me. They're trained by me, and yes, there is very definitely a difference.

Anderson: Okay.

Ferguson: We do a background criminal check on them, we require them to wear a picture I.D. -- photo I.D. -- whenever they're registering voters, we monitor their work to make sure that -- we give them a test that they must pass, we have a training video which I also brought for you to view if you're interested. So there very definitely is a difference. And a candidate is not eligible to be a field registrar and represent me in that way.

Anderson: But a candidate could pick up --

Ferguson: Yes.

Anderson: -- or his or her designee could pick one up. As long as it was less than 50 they'd never even have to sign out for it.

Ferguson: Not in my office. They would sign out for it.

Anderson: Okay. Thank you very much. Thank you, Madam Chair.

[A whispered conversation between Ms. Ferguson and her assistant.]

(5445)

Ferguson: Yes, anyone picking them up will sign out for them if it's one or ten or a hundred.

Lambert: Mr. Close.

Close: Thank you, Madam Chair. Ms. Ferguson, your reference to the list of individuals that Mrs. Von Tobel has brought forth, as far as not living in the district, have you substantiated it or seen that file which we have in our possession today?

Ferguson: No, I have not.

Close: Second question then, if I can. In reference to the irregularities that have been identified by Mrs. Von Tobel today, in reference to certain things happening at the polls, et cetera, do you have any report from your employees of any of these activities happening from your individuals who work for you? substantiation of what Mrs. Von Tobel's reported to us today?

Ferguson: No, I don't. I have all my internal documentation with me, which I also brought a copy for the committee if you want, concerning since I first began meeting with Ms. Von Tobel, before she filed a contest. And we discussed some of these things, such as the Fremont polling place. She brought in Pat (indiscernible) I believe was the woman's name, and several people were there. Keith Lyman was there, several of my staff members were there, and we discussed these issues. In fact, I have a memo here that I wrote to my head of training to discuss with Pat, whatever her name was -- that was mentioned -- these allegations and to make sure that she understood these things were not to occur. However, in the meantime, Ms. Von Tobel filed a contest. So Nanna Davis, who is the director of my training, had been unable to contact Pat, and once she filed the contest of election, I did not feel it appropriate that I interfere by giving testimony from these people. It is my policy -- well let me back up -- in Clark County they've always allowed people to bring donuts or candy or whatever, to the workers at the polling places. I think the Mirage does that, various candidates do that, but it is not to be done with their name on it or, you know, it would be improper, in my opinion, for a poll worker to announce that this came from this candidate, okay, and use the candidate's name. So this was the first time this was brought to my attention by Ms. Von Tobel. I told my training -- the person that trains my EDOs -- I wanted them to make sure to stress that, you know, they should not be mentioning candidates names with regard to favors or anything like that.

Close: Okay. One more question. I couldn't -- have you seen the document provided to us by Chris today, in reference to the response to Mrs.

Von Tobel's documents then. We have two documents, one from Chris's group, one from Kathy. Have you seen the other one item?

Ferguson: No.

Close: Thank you.

Lambert: Ms. Buckley.

Buckley: Thank you, Madam Chair and Ms. Ferguson for your testimony. It's sometimes hard to sit when your integrity is being maligned, and I appreciate you sticking to the issues that are before us.

There were some allegations that at a certain polling place a number of people were sitting on the floor and were discussing -- had campaign literature and were mentioning Ms. Giunchigliani's name. Do you or any of your staff have personal knowledge of that event, and can you shed any light on that?

Ferguson: No, I do not have personal knowledge of that event. Being unable to contact Pat at the Fremont polling location, Nanna Davis did speak with the County liaison -- and it's a man. I forget his name -- about that day, and I believe he did say, it was brought to his attention at some point in the afternoon, that some people -- poll workers -- were in there with buttons on and that he asked them to leave. I have been told that by Nanna Davis.

I did bring all of my training material, including the training video and the handouts that we do give to these people, and you can see where we do advise them that there are to be no campaign buttons and no partisan activities in the polling places. So I did bring that for your information, as well.

Lambert: Ms. Tiffany.

Tiffany: Thank you, Madam Chairman. Kathryn, I'd just like to start off complimenting you, your department -- I have had nothing but very positive interaction with your staff. Any information I needed, they provided it for me. Also, I think that you ran a pretty decent campaign, and this time there was a lot less confusion at the polling places than ever before, and there seemed to be more consistent information given to your staff in training.

But the question that I would like to ask is, you know, campaign irregularities -- and what I mean specifically by that, whether you've moved, whether you are registered to a commercial building or to a vacant lot -- if an election was closer, let's say it was 23 votes instead of 123 votes -- I know in my race alone, I'm sure there were 23 people that had moved out of the district or had some problems. Is it too cost prohibitive to verify residences that live there now, on commercial -- this is open land versus moved or vacancy -- is it too cost prohibitive to do those checks more often during an election period, maybe before or after the primary or right before the general?

Ferguson: Well, there's some -- it is costly, and, for instance, I am -- one thing I'm doing -- is with the sample ballots. We get an inordinate amount of sample ballots returned to us. Okay? But we have to buy those back from the post office. They won't even give them back to us. They wouldn't even give us the ones from the general. What I'm having done is we are bar-coding the registration I.D. number on those labels and we're buying them back during these municipal elections, for the first time, so that we can scan them and do exactly that, and process those. Anybody that brings us information that people do not live at an address, we do proceed to send out the notices and process that. It is difficult, you know. I forget how much it costs us to do that mailing. I think it's going to cost me \$25,000 to buy these back -- it would have -- these sample ballots -- from the post office. So, it's a costly thing and I would say it's the most difficult thing, is keeping the addresses clean.

Tiffany: Are you bound by law on what time period you have between verifying that somebody doesn't live there anymore and then purging them?

Ferguson: Well, yes. Now, as of January 1st you cannot purge for four years, even after you know they no longer live there.

Tiffany: Is that our statute?

Ferguson: That's federal

Tiffany: That's federal. Oh, my -- well, that kind of puts you in a box on that one, too.

The last question too, is because of -- you can see the significance of your department with close races, what could happen in the future, the 21/21 split. Do you have anything you want to come back to Elections and Procedures with, to help us on this? You know, I don't want you to tell me. Just say yes or no on that.

Ferguson: Yes, I do. I have several bills, BDRs that I'm proposing, and a lot of work yet to do in analyzing the various problems with the law. And there are some.

Tiffany: Indicative of what we're seeing, you know, in these races. I think there's some room for change and correction. Thank you. Thank you, Madam Chair.

Lambert: Mr. Price.

Price: Thank you, Madam Chairman. I was trying to find something. I have to admit I can't find it. At the early voting down at your office, at the early voting, I noticed, and I really don't remember if it was both the primary and the general, but it's one or both -- there was a sign out a few feet away from the door that said that basically said, no campaigning from that sign board inside. Was that there for both elections?

Ferguson: Yes. It's an early voting law which I helped put together. Gene Segerblom had a bill before you when I first took this job and I helped put that together, and there is a --

Price: Which prohibits campaigning.

Ferguson: -- electioneering.

Price: Electioneering -- within so many feet of the election --

Ferguson: Right.

Price: Okay. In the quote, old days, we used to have to stay so many feet beyond, and I was under the impression that some type of a challenge had been made on the constitutionality or something of that law, and there was a period of time then that that changed, and they basically changed it to the door going in, so that you wouldn't be allowed to electioneer, which could -- I would say define wearing

a button -- inside, once you walked into the election room and so forth. Do you have any idea? Is that a federal law, or does it vary from state to state? Do you know? Or --

Ferguson: I don't believe it's a federal law, and that is something we're asking for in this session is a hundred foot electioneering distance.

Price: Thank you.

Foley: If I might. I believe it's NRS 293.361 that states, during the time a polling place, for early voting, is open for voting, a person may not electioneer for or against any candidate, measure, or political party in or within 30 feet from the entrance of the voting area. And otherwise, I think the law, with respect to regular voting, is inside -- is defined as inside the polling place, and not a buffer zone outside of it.

Lambert: Do you have any further testimony, Ms. Ferguson?

Ferguson: What?

Lambert: Do you have any further testimony?

Ferguson: Well, let me see.

Well, I can't -- I would just like to say that I was trained by the U.S. Justice Department and U.S. Attorney in voter fraud prevention in 1992, and I think it's very important. And I'm committed to the integrity of the election process, and I always welcome any criticisms or things that people can bring to light that we can do in a better way.

Lambert: Thank you. You probably won't find ten people who care more about free and fair elections than these members of this panel. Thank you for your testimony.

I believe, Mr. Foley, you said you wished to have a Dale Erquiaga testify.

Foley: Yes.

Lambert: Is Dale here?

- Foley:** He needed a call from the committee.
- Lambert:** He needed a call from the committee. Anyway, we'll have to go to someone else. It's ten minutes to five. We had better call him. If he's going to come today, he better come quickly. Is someone going to go call him right now? [To Mr. Price] Would you, Bob? Thank you. Mr. Price will go call him. Mrs. Buckley.
- Buckley:** I'm not sure of -- if he has any relevant knowledge as to the actual contest. We certainly have our legislative counsel to testify if we need any clarification with regard to the interpretation of any law, and just in line with kind of the, I think, the committee's desire to hear all relevant evidence in a somewhat timely fashion, I'm wondering what he can possibly add that our legislative counsel can't provide to us.
- Foley:** I've detected from the committee that the -- some of the legislation regarding the mail-in applications, specifically the requirement that any person assisting must provide a name, address and signature, it's more of a clerical type thing. Mr. Erquiaga can testify that it is not simply a clerical matter. That it is truly the only basis that the Secretary of State, anyway, thinks, and I think the Election Department thinks -- provide any accountability for mail-in registrations. He attended all of the sessions. He followed that bill and was with Cheryl Lau, who apparently testified numerous times before the committee. I wouldn't expect his testimony to take very long at all, but I think it would be very enlightening for this committee to hear from him.
- Buckley:** It's just my opinion, but in trying to proceed with getting all of the relevant evidence, I find that that would be an opinion as to what the law means. And I think that if we need an opinion or some legislative history on what the law means, we could direct Ms. Erdoes to do the legislative history, including getting reports from the Secretary of State as to what they meant. But I do not find it very relevant in trying to get to the truth about whether the election results would have changed. My opinion, for what it's worth.
- Lambert:** Well, we've allowed a lot of latitude on all parties. I don't think the testimony will take very long, and in the interest of fairness, I can't see it would hurt to have another opinion. We don't want to make this too simple.

While we're waiting --

Erdoes: I'm sorry, I just have a quick question. We'll be glad to call him. Would you like him to come now or later this evening or tomorrow or --

Lambert: Mr. Price is calling him right now.

Erdoes: Okay.

England: [Ms. England is speaking without her mic turned on.] In the interests of expediting these matters, I would certainly waive any objection I have to providing evidence on behalf of my client, and while we're waiting I would be happy to allow the gentlemen from the Culinary Union who have waited patiently for two days, to testify about the busing incident. They are here, we have affidavits to provide to you, as well. (Indiscernible) cover all the issues that have been raised by the case in chief. I'll waive any objection I have to take them out of order to allow them to testify now. They're here. I'm not going to question them or anything. They'll get up and tell you the story about what happened on that day.

Lambert: Do you have a problem with the other -- going a bit out of order in our agenda and having part of Ms. Giunchigliani's presentation --

Foley: Not at all, for the purpose of expediting the process so we don't all sit here and twiddle our thumbs. I don't know what Mr. Erquiaga's schedule is. I'd ask that maybe if he comes running through the door, that we interrupt who's on and let him get in and out --

Lambert: Hopefully, all of this will go fairly rapidly. [To Ms. England] Which person would you like to call.

England: Glen Arnodo.

Lambert: Oh. Glen Arnodo.

Arnodo: Madam Chair --

Lambert: Mr. Arnodo, would you raise your right hand --

Arnodo: Oh, I'm sorry.

Lambert: Do you solemnly swear or affirm, under the pains and penalties of perjury that the testimony and evidence that you will give in these proceedings will be the truth, the whole truth and nothing but the truth, and that you will answer all questions presented to you in the best of your ability and personal knowledge.

Arnodo: I do.

Lambert: Please give us your name and address.

Arnodo: My name is Glen Arnodo, and my address is 1247 Bernard Drive, Las Vegas, 89102. (See affidavit, Exhibit I) Madam Chair, and members of the committee, I am the political action coordinator for Culinary Workers' Union, Local 226 and I organized the Union's efforts on behalf of Ms. Giunchigliani in the last election. Despite the serious accusations that have been hurled against our Union staff and members, I won't speak to those, I will just speak as to not waste your time, directly to the now infamous busing incident. And then if you have any other questions about the Union's efforts in the campaign, please feel free to ask me.

On November 2nd, 1994, the Union held two political rallies in our parking lot at 11:00 a.m. and 6:00 p.m. At each of those rallies we had a number of candidates come to the Union and speak to our members. These candidates included Congressman Bilbray, Judge Leavitt, District Attorney Stewart Bell, County Commissioner Myrna Williams, a whole host of candidates came to those events and spoke to our members.

At the conclusion of the rallies in the parking lot, in both the morning rally and the evening rally, we had two buses. Each of those buses seated 48 people. We filled up those buses, went to the Election Department and voted down at the County Board of Elections.

Once we got to the Election Department, and I have to compliment the people down there. As Ms. Ferguson had stated, I had been in contact with them beforehand to let them know we were coming. They did an exemplary job of handling the number of people that we brought to the polls. The whole event went better than I think anyone could have anticipated, given the number of people that we had brought. As a matter of fact, two

election workers even commented to me that it was the most organized, best disciplined, best behaved large group of people that they had had at the polling place during the early voting period.

Once we got to the polling place, our members filed out of the buses, and then they lined up in the hallway of the Board of Elections Department, but not in the voting area. There was someone from the Board of Elections that prevented anyone from getting into the voting area until they were ready to have them go in there. So the crowd just simply waited in line, they had, in their hands, the list of Culinary endorsed candidates, some 70 or 75 endorsed candidates from Senator Bryan to Judge Foley, they were all on there and they waited patiently in line until they were called by an election worker to go vote.

And I wish there were something more exciting to add, but that is the extent of the process. They just waited in line. When it appeared at the end of each event, that all our members were back on the bus, I went to an election worker and I asked if I could go in the back, just to check to make sure that we weren't leaving any Culinary members behind. An election worker said that was fine. They accompanied me, both in the morning and the evening, we walked to the back, we looked around, we saw -- I saw none of our members, I left the premises, we got on the buses and we went back to the Union hall.

Lambert: Thank you for your brevity. Are there any questions?

[General laughter]

We should compliment the gentleman. It's the shortest presentation we've had today.

Mr. Close.

Close: Then point blank, then, you will deny any fact as far as trying to facilitate any voting within the rest of those areas, is that correct?

Arnodo: Within the vote -- absolutely. Absolutely. We -- as a matter of fact, we did not even campaign. As people were getting off the buses at the Board of Elections, before they even entered the

building, we didn't do any campaigning. We had just had a political rally, we had the folks on the buses, we did all our campaigning off the premises. Once we got there we simply opened the doors, people went inside and lined up.

Close: Thank you.

England: [Speaking without her microphone on] We would ask that we have both an original affidavit of his which summarizes his testimony, and we'd like to introduce that (Exhibit I) to the committee as one of our exhibits. We would like to introduce the exhibit that he had (indiscernible) 75 candidates which the Culinary Union endorsed in this last general election (Exhibit J). Those would be our Exhibits D, would be Mr. Arnodo's original affidavit provided to them --

Lambert: I'm sorry, you need to turn that mic on. It won't record on the tape.

England: Excuse me. I'm sorry. We would introduce Mr. Arnodo's original affidavit as Exhibit B (for Assembly transcription purposes, Exhibit I) in our presentation and the document which shows the endorsement of the 75 candidates of the Culinary Union, as Exhibit C (for Assembly transcription purposes, Exhibit J).

Lambert: I think they'll be C and D. We already have --

England: C and D. I'm sorry, the Motion to Dismiss was there. I'm one short. So his affidavit would be C, the endorsement page would be D.

Lambert: If you can hand those to the secretary to pass out, we'd appreciate that. Are there any other questions of Mr. Arnodo? Ms. Tiffany.

Tiffany: Thank you. Having not seen that document yet, sometimes when there's endorsement letters, both candidates are on there, but the significant one that you've chosen has been bold or highlighted. Was there just one name per office?

Arnodo: Per office, correct. Yes.

Tiffany: Can I ask -- if I can have a little joke -- were there any Republicans on there?

Arnodo: Yes. Actually there were.

Tiffany: Thank you.

Lambert: Are there any other questions? Thank you Mr. Arnodo.

Arnodo: Thank you.

Lambert: Dale Erquiaga.

Secretary: Mrs. Lambert, some of these names I don't know, and I don't have a card.

Lambert: Oh, I am sorry. Well, we have three things to ask you, besides the oath and saying your name, your address and your occupation. You're going to have to spell your last name, I can guarantee it.

Rule 545 of the Assembly Rules requires that I swear you in.

Erquiaga: Okay.

Lambert: So if you'd raise your right hand. Do you solemnly swear or affirm under the pains and penalties of perjury, that the testimony and evidence that you will give in these proceedings will be the truth, the whole truth and nothing but the truth, and that you will answer all questions presented to you to the best of your ability and personal knowledge.

Erquiaga: I do.

Lambert: Thank you.

Erquiaga: My name is Dale Erquiaga. It's E, R, Q, U, I, A, G, A. I reside at 4368 Pescado Way in Reno, Nevada. I'm the Chief Deputy Secretary of State. And I'm sorry, I'm not familiar with exactly why I'm here. [General laughter] This is the quickest you'll ever see the bureaucracy move. I got here as quickly as I could, and if someone could give me a little more background, I'd appreciate it.

- Lambert:** Mr. Foley asked you to come and explain about the mail-in registration form, and the part of the form that if you assist someone, you should sign -- talking about assisting someone, and why that signature is there.
- Erquiaga:** Okay. Why it was added to the law?
- England:** Madam Chair, begging the witness's indulgence --
- Lambert:** Will you turn --
- England:** I'm sorry. Ms. Ferguson brought with her a whole set of documents, one of which includes the carbonless mail-in voter registration form, which has not yet been introduced to this committee. I would ask that it -- [to Mr. Erquiaga] and this will probably assist you in testifying, since you'll have the form in front of you. I would ask to be allowed to mark that Ms. Ferguson's package of documents as our Exhibit E (previously entered by Ms. Ferguson and marked Exhibit H for purposes of this Assembly transcription) and he can refer to this mail-in registration form right within it and speak, at least, by having the document in front of him.
- Lambert:** Thank you. If you could give a copy to Mr. Erquiaga and the secretary for distribution to the committee, we'd appreciate that.
- Erquiaga:** Madam Chairman, can I request a copy of the Nevada Revised Statutes, Title 24 with 293.5235, I think.
- Lambert:** Oh. Ms. Erdoes?
- Erdoes:** We don't have it.
- Lambert:** We thought we might need it today, so we asked -- I think it's 293.5235, section 10 (Exhibit K).
- Erquiaga:** Thank you Madam Chairman, Mr. Chairman. Mr. Foley today asked, through Senator O'Connell, for an explanation from the Secretary of State's Office as to why subsection 10 and subsection 11 and subsection 12 of NRS 293.525 were added to the law. As some of the members of this committee will recall, in 1993 Secretary of State Lau introduced Senate Bill 250, the

Omnibus Election Reform Bill, and those provisions were added to the law as a result of that measure.

Secretary Lau stated at that time that they were being added for a number of reasons. The Secretary of State's Office was notified in the 1992 election that voter registration affidavits, the mail-in form, were being used -- allegedly being used -- by individuals who would carry them, say to a supermarket, and I would register Mr. Sandoval. He would tell me that he wished to be a Republican, and I would mark him down as a member of some other party. Then I would be paid a bounty for that registration. We also, as you will recall, addressed bounties. But I would, in effect, mark it down in a different manner than he had directed me to do. Four of the allegations were made that after I had assisted Mr. Sandoval in filling out his affidavit I would alter it, changing his party registration. This was a specific concern. The effect that that has, as you all are aware, if you think you're registered as a Republican and I, in fact, put you down as an Independent American, or member of the Populace party, you were disenfranchised at a primary. You cannot vote when you show up and think you are Republican. If you're not on the rolls, you don't vote in the primary.

So we did a number of things. One, we now require that every voter receive a receipt -- a duplicate copy, a carbonless paper, so they can prove, this is the way I intended to register. We also added the provisions that you see in subsection 10, 11 and 12, making it a felony if I alter that affidavit or application, and requiring that I put down my name and address. And initially we requested name and phone number and that was amended to be address, because it was felt that it would be easier to locate the individual if we had the address. That was done so that there was recourse for a district attorney or some prosecutorial body, if I did, in fact, alter the document, they could find me. The allegations in '92, somebody registered me at Smith's grocery store and I don't know who, and I can't find them now, but I can't vote.

So it was specifically put into the law in that manner so that we would be able to find that individual if anything was wrong with the affidavits.

Mr. Foley also asked, why a felony? And as Mrs. Lambert and Mr. Price will remember, there was a great deal of conversation about those penalties in 1993. It was felt by some that the penalties were too stringent. Most election violations, prior to that time, were a misdemeanor, or a gross misdemeanor. It was Secretary Lau's contention, and I know she testified to this fact, and I have stated it numerous times, and in the many hours that I spent before you -- her contention was if you tamper with an individual's right to vote in any way, you should forever lose your right to vote. That is, you should be a felon. It was plain and it was very simple. That was her contention, and the legislature apparently agreed to that. That's what we ended up processing out. Civil penalties were added on the floor of the Senate, as another means. The concern was, as stated on the Senate floor, that if we make all these things felonies, then we begin sending all these people to the state penitentiary, then we wanted to be compensated for that, so civil fines could be recovered, as well. To the best of my recollection, that's why it was a felony. It was done deliberately -- there was a great deal of testimony on that. And the reason behind it was, we wanted to be able to find the person who tampered with any affidavit of registration.

Lambert: Thank you. Are there any questions of Mr. Erquiaga? Mr. Spitler.

Spitler: Thank you, Madam Chair. To your knowledge, how many people have actually been convicted of a felony for committing these crimes?

Erquiaga: I'm not aware of any. In 1993 the grand jury in Clark County issued, I think, 12 indictments, but I'm not aware that any of those were ever taken to trial.

Spitler: So it's on the books that no one's ever really been prosecuted.

Erquiaga: To my knowledge, no.

Spitler: Thank you.

Lambert: Mr. Price.

Price: Dale, did you come over here because I called your secretary and she told you -- and you got here before I came back?

[Laughter]

Erquiaga: When you say come, sir, I come!

Price: You're not supposed to make the legislators look bad.

Erquiaga: That's not my intention at all, sir. I promise I'll go more slowly next time.

Lambert: It's good to know that you didn't destroy Bob's reputation, because if he had got back first, we would have been truly surprised. Mr. Perkins.

Perkins: Thank you, Madam Chair. Dale, sub 10 reads, "A person who, by mail, registers to vote pursuant to this section may be assisted in completing the application for registration by any other person. The application must include the mailing address and signature of the person who assisted the applicant. "The failure to provide the information required by this subsection will not result in the application being deemed incomplete." And in the form itself, it talks about, you must have this information, and those sorts of things. Do you have an opinion from the Secretary of State's Office, anyway, from your perspective, whose burden that is to obtain that information? Whether it's the person assisting that must put it down, or the person who's actually being registered that must obtain that information?

TAPE 3 - SIDE A

Erquiaga: Let me answer your question a couple of ways. Number one, I try in my job, not to have personal opinions. I find that it's not a good thing to do. The form is prescribed -- instructions to the voter. And number two is, you may be assisted in completing the application for registration by any other person. That's directed to the voter. If you do receive assistance, that person must include his/her mailing address and signature. That's directed to the third party who must fill in 12 -- box number 12. I would answer your question by saying, but the voter has the responsibility if he asks for assistance, that the instruction's on the format.

Perkins: And I don't have the form in front of me, but to read the form -- there are also instructions as far as filling out the bottom box, for

that person that assists, and it talks in the second person, if I remember my grammar correctly --

Erquiaga: Uh-huh. You're correct.

Perkins: Is that addressing the voter, or is it addressing the assisting person?

Erquiaga: In the instructions, as I read, and you're correct. In box number 12 it says, name, mailing address and signature of person who assisted you with the application, and I see where you're leading. That seems to be directed at the voter.

Perkins: So then again, not as a personal opinion, maybe you and Mr. Price should get together about personal opinions -- Can you represent the opinion of the Secretary of State's Office as to who that would be construed to address?

Erquiaga: Okay, I cannot represent the opinion of the Secretary of State's Office. Only the Secretary of State can do that. I can tell you that I would agree with your -- where I think you're going. The language in number 12 is confusing. The statute is clear. And that's as far as I'll go.

Lambert: Are there any other questions? Thank you Mr. Erquiaga, and we appreciate your speediness.

Now, I believe that would be the completion of the presentation of your case, Mr. Foley?

Foley: Yes.

Lambert: And Ms. Giunchigliani will be called up -- it seems more appropriate when her case is presented. Do you understand that?

It is a quarter after 5:00 and past time to break for dinner. So we will recess until 7:00 o'clock and then come back again. And we appreciate all your patience and cooperation.

[Dinner break from 5:15 p.m. to 7:05 p.m. The roll was called with all committee members present.]

Spitler: On your desk, Mr. Price had asked the question regarding voting -- registering and having an address on a vacant lot or whatever. There was an opinion from Mahlon Edwards, the Deputy District Attorney, issued to George Ullom, September 1, 1988. We include that letter with backup documentation (Exhibit L. This exhibit may be viewed in the Legislative Counsel Bureau Research Library). I see one paragraph here, "The interest served by the residency requirement is the determination that the voter meets the voter qualifications, i.e., that the voter has continuously resided in the state for 30 days, and in the precinct for 10 days. ... This interest is satisfied by the furnishing of a resident's true address, even if it is not a mailing address. ...". There's several citations there. "... Therefore, as long as [this person's question was] address [is], 'under the bridge behind the Park Hotel and Casino,' is sufficient to place the locale within [the] precinct, he may register to vote at that place of residence." So we supply that for the information of the committee, and to respond to the question of Mr. Price.

Mr. Price.

Price: Oh, thank you. I'd like to thank our staff here. They're faster than the Assistant Secretary of State.

Spitler: Okay. We're at the point in our agenda where we're ready for the presentation of the Contestee's case.

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England: Members of the committee, at this point in time --

Spitler: I would remind everyone who has been sworn in, that they continue to be sworn in under oath with this committee.

England: At this point in time --

[Slight problem with the microphone staying on]

At this point in time, now that the Contestant has finished presenting her case, we believe that she has not yet met the burden that you set out for her, which was to prove that there is sufficient evidence to call into question 123 votes which would make the difference in this election. So at this point in time we

would move that the case be dismissed for her failure to sustain her burden in presenting her case.

Spitler: Once again I would indicate that we have agreed to hear the case, and I appreciate your comment. We will proceed, however, so would you continue with your presentation.

England: Certainly. At this point in time, my client, who I will attempt to pronounce her name correctly this time, Giunchigliani, Ms. Giunchigliani will present the evidentiary information that she wishes in contradiction and in explanation of the information which has been provided in the Contestant's case in chief.

Chris G.: Thank you. If it please the Chair, I would prefer to do it from sitting. I'm not a podium person, if that may be.

Spitler: Okay.

Chris G.: I know, you need to swear me first?

Spitler: Yes, thank you.

Chris G.: You're welcome.

Spitler: Do you solemnly swear or affirm under the pains and penalties of perjury, that the testimony and evidence that you will give in these proceedings will be the truth, the whole truth and nothing but the truth, and that you will answer all questions presented to you, to the best of your ability and personal knowledge.

Chris G.: I will. My name is Assemblywoman Chris Giunchigliani, if you say it the Italian way, Giunchigliani. I live, or reside at 706 Bracken Avenue, in Las Vegas, 89104.

I will attempt to be brief. We've been spending quite a great deal of time regarding this issue, which I think rightly needs to be done. I think people have to have their day in court, so to speak, and that that's what this opportunity is for.

I'd like to share with you, though, maybe by walking through what my campaign philosophy is, and what my district looks like, in

order to shape some of the -- deal with some of the questions and allegations that have been made here.

I run a very clean, up-front, above-board, grass roots campaign. I know we all attempt to do that. I trained my walkers on how to go to doors, we do trainings with them on how to properly approach people, and how to thank them if they don't want to be spoken with, because a lot of times, you all know, they do not want to be bothered; how to verify, as best as possible, if that is the voter at that door.

On election day my people are trained, you do not campaign in polls. I send my poll watchers in to -- into the poll. This year is the first time I've ever had walkie-talkies, but we had a heavy grass roots stump, get out the vote effort, and so we needed some communication to be going back and forth. But they were told, you do not campaign.

They were given -- this is the basket -- or a sample of one of the baskets that we gave out to the poll workers, not to voters. It was to go to the poll worker. The County does not provide any food for the people, so I've always brought fruit and candy bars for the individuals. They are not to be given to voters and I've never, ever instructed any of my people to do as such. That has generally been set aside and handled by the coordinator or whomever was in that polling place.

We did make up badges this year, but they said -- just so you'll know -- I had -- some of them had these. They were told to take them off and they did, as far as I know. Some also had this as just an -- so they knew, so the poll liaison would know who the people were and who they were affiliated with. I only had one poll worker, or watcher, at each poll. There's been testimony that I had huge numbers. They weren't my volunteers. They weren't assigned by my campaign.

I feel that a great deal of what's gone on over this last two and a half months, has disenfranchised the voters of my district. I am duly elected, and I think we will be able to prove without a doubt that there should be no votes taken away from me. I have not done anything wrong, nor has my campaign. My character has been impugned. It was stated today by Mr. Foley, that my

credibility was on the line, and so I welcome, at least, the opportunity to attempt to make the case that my character should not be maligned in this way. Nor my volunteers, because people, you know how they are. They're over-zealous in many of your campaigns. All of ours get into it that way. But we tried to protect the Culinary as best as we can. We try to protect people from being hurt in any way, shape or form, or harassed in any way, shape or form.

Let me line out for you a little bit of my district. Assembly District 9 represents, for those of you from the northern part, the original part of Las Vegas. It's the heart of Las Vegas. In fact, in 1991 that was kind of my campaign theme. About one fourth of the district is made up of motels. I have all of the downtown area. So many of my registrants -- my constituents -- live in motels, and that's their home. We have no right to judge these individuals. I commend them for taking the opportunity to not only enroll their kids in school when they have them, such as some of the parents at the Gold Dust or the Sundowner do, but also, to exercise their right to register to vote and then to go cast those votes. Every district has some type of structure in that way. Mine happens to have some very wealthy areas -- the Scotch 80's and the Spanish Oakes -- and some of the poorest areas.

So, I have a transient district. I think we all do. I mean, if you look at Las Vegas for one of the few areas that puts out two telephone books a year, just because of the transiency that we have. And for that very simple reason, you have to deal with trying to keep -- and make sure that the people are there, where they say they are. Now, I walk my district, and make every effort to clean my list as best as I can, but the job of making sure who resides where is not my job as a candidate. And it's not my job as an Assemblywoman.

I have -- there have been statements about the people registered to businesses and that. I don't have knowledge of those types of things on a regular basis. I don't know how to judge. I have a gentleman who lives -- he lives above his garage. That is where he -- that's his home. I have Jackie Gown who is registered at his hotel, and he declares that as his residence and that's right for him to do if that's what -- he declares that as his residency. Who

am I to challenge that, and who is the Election Department to challenge that?

But none of the evidence that's been brought forth can take any of those votes away. We cannot go back after the fact and try to allege that somebody did or did not live in a place. An example is the Meadows Village area. Unfortunately, in Vegas it had a name called the Naked City for a long time, but we've really worked in that area to -- we've put in community policing and bike patrol and that, but it's where the Vegas World is located, for those of you that've been following that. The big tower.

And in order to introduce some of this, I would ask you to look at the back section, page 1 and 2 of what we submitted, and it says, the chart of the 11/8/94 precinct (Exhibit E) -- Tab 9, I'm sorry. Thank you. This year -- it's the last two pages of Tab 9. This year, due to a big debate with our City Council on the issue of eminent domain and allowing the Vegas World Tower to be expanded, several apartment complexes were under consideration by the City Council to take away from the private owners. We have in that area -- there's been formed through the Lot of the Weed and Seed program, a Managers' Association, as well as a group of the people that live in that area, to try to work out problems. And with the assistance of Nevada Legal Services, 'cause many of these people were seniors and Hispanic and did not speak English, they were represented before the City Council because this was their home and they were going to be torn down and there was no place for them to go, and that type of thing. We had a huge debate down there. And I was very involved in that situation.

These individuals on this chart -- these are the addresses of what the City Council declared as eminent doma -- under eminent domain and took the property from the owners. Noticed eviction notices in September, but under a ruling or an inter-injunction, or whatever the term is, from Nevada Legal Services, that eviction notice was lifted, and these people were then not noticed of eviction till after the close of the change of address by the Election Department. These buildings are the empty lots that have been alluded to. These buildings were standing on election day. They are gone now. And I would submit to you that I believe in all instances, of that chart, where some people were not even

registered to vote, that those individuals that were registered to vote, were legally registered to vote. The law specifically states that if you change -- if you move, period, not even deal with eviction, but if you move or vacate your residency after the change of address, you're permitted to go back and vote at your precinct in your Assembly District. And that's what these individuals did.

I think -- because I believe Mrs. Lambert, you had asked about those addresses at one point, and that's why we have the same numbers 'cause we assume that those were the empty lots by the pictures that have been taken and submitted. So that's where we came up with that documentation. So I would submit to you none of those people improperly voted, at least to our knowledge.

Now regarding the issue of me being accused of a felony. I was walking door to door in Meadows Village. I was on New York Avenue with my walking list, and I had just completed one apartment, and this was all trying to recall what happened back in September, but to the best of my recollection, Gordy, who's a member of the Apartment Managers' Association, was active in now Sheriff Keller's election campaign -- was outside as I was coming around the apartment. And I said, you don't show up on my walk list. And she said, I didn't get registered to vote yet, and she said, I promised Sheriff Keller I would. I said, well, you know, I've got mail-in forms. So she invited me into the home, I went in and she said, would you just, you know, fill out my stuff for me. Here's my address and whatever. I sat down at the table and did it for her, and then Gordon was working on the car. She said, Gordy, you need to come in and get registered. He came in, I filled out the information, I left the forms with them. They hand-addressed -- and I have copies of it if you want -- the front of the voter registration form, as a mail-in, and they stamped it and mailed it in themselves.

Now, Dale in his testimony stated that number 12 in his reading was for the voter, but that it is confusing and that the statute is clear. Now, my intent was pure. I was not trying to mislead, misrepresent or anything. If I erred, then that's my responsibility and I'll take that responsibility, but at no time was I trying to hide anything, misrepresent anything. If the issue which appears in testimony was to make sure that those forms weren't tampered

with or maligned, I would have taken them with me and mailed them if that's the case. I did not.

So I hope that that addresses it. If there's a mistake that's been made, it's a mistake on my part and I will take that part of it. But at no time did I do anything wrong, or what I felt was wrong. I helped her fill out the form. I left the form with them for them to fill out. I carry mail-in forms. I check them out of the Election Department and I check them back in when I'm done. I've always done that. You go to a door and somebody you thought was registered there, they're gone. It's a whole new family. You want to get registered, here's a form. I leave it with them.

But in this instance, I was asked, I helped her, and that's what I did.

Regarding a question that Mr. Foley had asked previously, that he would like to have me address. I have met Ted Pappageorge twice. The first time I met Ted was when I had a mass walk in my district and approximately 125 volunteers showed up and we walked my Assembly District, and he introduced himself to me. That was the first time. The second time was on election morning at 4:30 a.m. at the -- we were going out door-to-door and he was one of the volunteers that showed up to go out door-to-door to hang our GOTV notes -- you know, remember to vote. The other two individuals, DeZarn and Walker, I don't know whom they are. I don't think I've ever met them. I do not know Jose Solano, I don't know Ms. Hunnh and I don't know, I believe it's Alex Kanaan. If I've met them at the door, I'd have to go back and find my walk cards to see if they were even home when I went to their door. But I don't recall ever having met them.

I do not give direction to Culinary. I was endorsed by Culinary along with many other organizations, and I'm proud of having the Culinary endorsement, along with many of the other organizations. But I did not have any -- I don't direct their voter drive or anything else, as far as that's concerned. I think that was one of the questions Mr. Foley had asked me to address.

The issue of people registering at businesses, I touched on. I think there can be selective looking at that. I mean, I could go through now and say -- I could drive up and down streets and say,

there's a business that someone registered there, and see whether or not they show up on what Ms. Von Tobel presented. I don't think that suits anybody. I think that may be the only -- I think that's for the purview of the Election Department to try to get a better handle on that. However, in testimony from both Mr. Foley and Ms. Von Tobel, they said it would take an army of individuals, it's too time consuming to do it, you'd have to go day-to-day, week-to-week to be able to even find who these people are, where they're at, and where they're continuing to be. And I think Ms. Ferguson testified they attempted for the first time ever in Clark County, they did three separate mailings to try and find these individuals. How am I to be held accountable for that. I'm not.

The only -- when my campaign came across a registered voter that had -- it was a vacant lot, my campaign turned that into the District Attorney's Office, which is the proper authority to deal with someone who misrepresents where they're registered. And that was Dante Duce, and that was my opponent's primary -- my - - Kathy's primary opponent. His name's never appeared on any of the documentation of someone illegally registered to vote at an empty lot. That may be selective as well, I'm not sure, or perhaps an oversight. However, the charges have been brought forth and the District Attorney's Office is working on that. And that was turned in by my campaign.

(660)

Turnout, I would say -- turnout is not indicative of fraud. Transiency is not indicative of fraud. Fraud is an extremely strong word, and I'm offended that that's been used in my case. I've done nothing fraudulent.

An example was used in, I think precinct 92. There were 24 people that voted in the primary and one for Dante Duce, and 25 voted, and I got 111 in the general election, so that must show something. Well I'm the candidate. I've always walked Meadows Village myself. I don't believe my opponent went there. At least not during the election. So I got the votes 'cause I walked the area. If she was, I was not aware of it, 'cause I never picked up on anything at the door or from voters that they had seen Kathy at that point in time. I do know that people went in after the election charges. I know that Ms. Von Tobel and Foley have stated that they had people go out door-to-door, as well as Kathy herself, to

try to find where people were at after the election. And -- you know, that's fine, but I believe you get votes by contacting the voters, and that was what my job was, not only as a candidate, but also as an Assemblywoman. I've worked in that area very, very hard for the last four years.

People are being attacked for moving and changing and that type of thing, and I would just submit that you have to be very careful when we make a judgement call, because what may appear may not always be what's reflected. And at issue could be my opponent moved into the district in December -- or registered to vote in December of '93, and then on a filing form which you have, you can look through your documentation, you know, put a different date as having declared residency, sold in a bill of sale, the home that she ran for the office from on October 25th to Dan and Diana Foley. Vacated that property at some point in time -- I believe that right after the election -- moved back into another residence, then subsequently moved to another residence, and now is residing at 1325 Fifth Place where she just changed her voter registration to, which is on the MLS listing, short-term tenant, she purchased a ho -- or she's renting a home from Dan Foley.

So, yeah, what am I to conclude? I don't want to cast aspersions here, but at some point, what may look right or wrong -- you can't make one statement against voters and then do the same thing yourself.

This district is a wonderful district to work in because it is small. And so you get to know a lot of the people, so you can try to track where they're at. I would just submit to you that as the Assemblywoman and as a candidate, my campaign made a strong grass roots effort, we had a lot of volunteers and a lot of help, but we ran a good solid campaign with no intent to do anything wrong, and I don't believe my opponent has presented a single shred of evidence that either I nor any other vote should be taken away from me in any instance.

I resent that all felons allegedly would vote for me. I resent that 66 people could come on a bus and be bused in by the Culinary but that limousines could be bringing in my opponent's early voters. What's the inference? Just because 66 people showed

up at the polling booth, they don't know if they voted for me. There were 75 people on there, or whatever the Culinary handed out to them -- I don't know who they were there for. If felons, I think Kathy Ferguson -- something like 1900 were out there that they began to look for and then started to clean up the list. That means everyone of us had them in our districts. And now we've found something that Elections and Procedures needs to take a look at, on how to assist the Election Department for screening those, and I think that's a good thing to have come out of this.

The fact that electioneering -- I'm the one who put -- I already have the bill draft in. I put it in right after the primary to reinstate the 100 feet from politicking at the election area, because I had complaints in the primary from constituents about people handing out leaflets and that, and that's when I started -- I thought the Supreme Court had overturned it. I checked it out and they said, no, you can go ahead and reestablish that, so I put the bill draft in, and it's in our pre-file packet.

So I think there are some things that come out properly as inaccuracies, but I don't think that's irregularities, nor do I think there's fraud. And that pretty much sums up what I would like to present to you. Kathy England will, at some point when you're ready for it, do a summation, but I'd be happy to answer any questions from the committee that you have.

Spitler: Are there questions of Ms. Giunchigliani? Mr. Anderson.

Anderson: Ms. Giunchigliani, I want to make sure I ask the same two questions that I ask of you, I asked of Ms. Von Tobel, relative to your particular campaign. Have you made it a practice in the past to identify those areas where there's a higher transience than other areas of your district?

Chris G.: Yes, you could tell in my district what the downtown area -- which areas are pretty much transients, although some of the areas that used to be very, very stable because -- the unique part of my district, as well, Mr. Anderson, is that I believe, I think, I still have the highest number of senior citizens than any other Assembly District. And because it's the oldest part of Las Vegas, what used to occur is when they passed away their children went into their homes. Now we're seeing their homes sold because

their children are moving out of the district, so even the more stable areas are moving. But yes, you can tell.

Anderson: And therefore, the voter registration drive is a major element, would you say, in your particular --

Chris G.: It has to be in any campaign -- voter registration drives. Now what I do is my walkers just have mail-in forms in their bag so if they come across a new family they hand it to them. They're instructed not to do anything else.

Anderson: Thank you.

Spitler: Are there other questions? Mr. Price.

(851)

Price: This is really not a question, but we have had court reporters and we're attempting to make a really clear record as possible. And at one point in time I made a little note and I thought it might be explained for future people who may look at this.

You were talking about coming in at 4:00 in the morning on your GOTV, which is to anyone who might not know this in the future, get out the vote effort. And going around and hanging things on doors, I also hang them on automobile antennas and doors to encourage people to vote on that day. We correct for the record. Thank you.

Chris G.: Yes, I apologize. It is a get out the vote, GOTV.

Spitler: Are there other questions? Thank you very much. You had asked the rest of the -- what the evening would be. It would be the conclusion of your presentation. It would be an opportunity for rebuttal and any rebuttal would be limited to issues previously raised, and then at which time we'd have closing summaries, and then we'll go into public comment.

Do you have further comments that you wish to make?

England: Yes, we have two. The first witness that we would ask to call is one of the best voters himself, Mr. Danny Thompson from the Culinary Union.

Spitler: And I would indicate that Mr. Thompson has signed in to speak. Would you raise your right hand please. Do you solemnly swear or affirm under the pains and penalties of perjury, that the testimony and evidence that you will give in these proceedings will be the truth, the whole truth and nothing but the truth, and that you will answer all questions presented to you to the best of your ability and personal knowledge.

Thompson: I do.

Spitler: Thank you. Please state your name and address and occupation.

Thompson: Danny Thompson. I reside at 1405 Bambrook Court, Henderson, Nevada, 89014. I'm the Political Action Director for the Nevada State AFL-CIO. In that capacity I work with all the affiliate local unions of which the Culinary Union is one of the affiliates of our organization. In response to Mr. Foley's allegation that somehow union officials had coerced people or followed them into the voting booth on that day on November 2nd, when the Culinary Union had their voter rally -- well -- in response to his question, what they did was, they sent out a flyer to all the hotels, asked their members to come to the union hall and told them in the flyer that, we're gonna have a picnic, we're gonna have politicians come to speak and as a former politician, and I know all of you, don't pass up an opportunity to talk to a group of three or more. They all came, and the members came with the understanding that they were gonna be given a ride down to the Election Department to vote under the new law that allowed early voting. I had occasion to be at both of those meetings, in the morning and in the evening. I had not voted yet, and because I was heavily involved with the get out the vote efforts on that election day, I decided to get on the bus and drive down with those people. Now I live in Assemblywoman Tiffany's district, as did most of those people on that bus, live in someone else's district. They did not live, by and large -- very -- I -- maybe a handful of those two buses lived in Chris Giunchigliani's district. They took us down to the Election Department, we went into the Election Department to Mr. Foley's question, or accusation about what went on there, we stood in a

single-file line, along with citizens who had come down to vote early that day. My turn came, there was an election worker at the door where you actually went in to vote, he stopped you one at a time, he would look, when the computer cleared so you could go and sign the book, then he would say, okay, you go, you stop. I went, I got my ballot, an election worker followed me to the booth, he stuck it in and I voted. At no time did I see any union official follow anyone beyond that door where that election voter worker was; nor was there any coercion on the part, except that during that rally they passed out the form that Mr. Arnodo showed you, saying these are our endorsed candidates. Not unlike the Democratic Party would do, or the Republican Party, or whomever.

And I just want to clear that up that there was no coercion on any union official's part, nor was there any malfeasance that I saw personally, that day. I did not attend the -- I did not ride the bus down that evening, but I did attend the rally, and there were politicians galore speaking to those folks, trying to get 'em -- urging them to go vote, from the Supreme Court Justices down to district court.

That's about it. I'll answer any questions.

Price: Are there questions for Mr. Thompson? Yes, Ms. Tiffany.

Tiffany: Thank you, Mr. Chairman. I won't start with asking if you voted for me.

Thompson: Of course I did.

Tiffany: We'll get that out of the way.

Thompson: Of course I did -- I did -- I thought about voting twice, but then I thought nahhhhh.

Tiffany: Can I go on the bus with you next time?

Thompson: Yes, absolutely.

Tiffany: Okay, now that that's out of the way. I just want to make a comment about the bus tour. I know the Clark County Republican

Party, we did this also and it was to introduce all of our constituents to what early voting is, and it was a usual practice -- I guess you could say, in that it was the first time -- it had a purpose, and I commend you for that. And it's not unusual or unique. But the question that keeps coming up for me is if there were two buses and there were 66 people that were all in Chris's district, how did it happen that so many of them ended up being for Assembly District 9?

Thompson: Because, Mr. Chairman, Co-Chairman, Assemblywoman Tiffany, that was the total of all the votes cast that day -- in the whole day from 8:00 until whatever time they close.

Tiffany: I see. I don't know if anybody else understood that, but I thought it was the bus people that that was --

Spitler: No, I think Mrs. Ferguson testified to that.

Tiffany: Oh.

Spitler: Would you please come up and just clarify that, Mrs. Ferguson.

Ferguson: That was 66 out of 1100 votes that were cast that day, during the 12-hour voting period, all day long.

Tiffany: I see. Great. Thanks.

Ferguson: And those 66 were never identified as having come directly from those buses.

Tiffany: I see. Great. Well I thank you and I appreciate the clarification.

Spitler: Are there other questions for Mr. Thompson? Mr. Price.

Price: You rode on the Culinary bus, so --

Thompson: Yes, I did.

Price: -- so then presumably everyone on there were Culinary workers, I guess -- presumably.

Thompson: I think, yes.

Price: But it could have been others. Now, Culinary is only one of many unions that are involved in supporting people and so forth, and you, as the COPE, which is the Committee on Physical Education, person that works with us -- do you have any knowledge, I'm curious -- were all of the unions in this particular Assembly District supporting Ms. Chris Giunchigliani, or were there some that were supporting Ms. Von Tobel, or do you have any idea whatsoever?

Thompson: No. They were all supporting Chris Giunchigliani.

Price: All under the AFL-CIO unions?

Thompson: Of which we have 120,000 members in Nevada, and we encourage them to vote, and we encourage them to utilize the mail-in registration forms. And so me being there was just a natural part of my job. And SNEA, the state employees, just affiliated with us, and so we have them also. Oh, I'm sorry. That's right. SNEA did not endorse you. I think -- [Turned to Chris Giunchigliani] -- they did not.

Price: So there was at least one union --

Thompson: That did not.

Price: That did not. Okay. Thank you.

Thompson: Yes, I'm sorry.

Spitler: Other questions of Mr. Thompson? Thank you very much.

Thompson: Thank you.

Spitler: Ms. England.

England: Yes, Mr. Chairman, thank you. I would ask that we be permitted to recall Ms. Ferguson and to ask her to testify and provide you with additional information on four specific points, and only those points that have not been covered when she was called before by Mr. Foley in her case in chief.

Spitler: Are you asking to cross-examine -- do cross-examination?

England: No, I do not want to cross-examine her because I understand the committee does not want to do that. Let me tell you the subject --

Spitler: Okay, that would be helpful.

England: -- I want her to testify about. I want her to explain to you, since it's not in evidence and someone fully competent to testify to -- as to exactly what the rules are and when the last day is that you can change your registration, and when that cutoff was for this general election, so that we clear up this matter, if people moved after a certain date, are they still eligible to vote in that precinct from which they have moved.

Number two, I would like her to explain to you the limited ballot situation which occurs when someone has moved, and moved out of the district and how the department handles that.

I would like you to -- although perhaps it's already been clarified by the opinion, to give you what she understands the rules to be on homeless people voting, and what the requirements are in the Clark County Department of Elections for a homeless person to register to vote.

I would like you to provide information on other candidates who bused or limoed people in to vote during the early election process, and then I would also like her to provide you with information --

(Microphone not on)

-- on what information she has provided to prosecutorial agencies concerning voter irregularities that she has had some experience with.

Spitler: Why don't you continue with your presentation. Your concluding -- your wrap-up of your case. If in your presentation of this information there is error or something you don't know, we can ask for verification at that time. But it appears to me you're getting into a very gray area of cross-examination.

England: I am not competent to testify to any of these matters. All of the information I have, Mr. Chairman, is upon hearsay, and it's from

the Registrar of Voters, and I would not feel competent to testify -

Spitler: Would you turn your microphone on please.

(1215)

England: I'm sorry. Mr. Chairman, so that the record is clear, I am not competent to testify to those matters. Those are not things within my personal knowledge. I can certainly argue them, but I'm not competent to testify to them.

Spitler: Ms. Buckley.

Buckley: Thank you, Mr. Chairman. Maybe the most efficient way to proceed would be to see if the committee feels that any of the areas mentioned need clarifying in the committee's mind, in order to proceed. For example, I feel no need to have testimony regarding other candidates busing people in. That's legal. Others do it. If they don't, they should be encouraged to do it, as Assemblywoman Tiffany said. Some of that I feel we have enough knowledge on, but if any of the other committee members feel we need the additional testimony, to take it from Ms. Ferguson.

Spitler: What's the desire of the committee? Ms. Tiffany.

Tiffany: Thank you Mr. Chair. I don't think that I need to be versed on any more rules or what pertains to people. Now if you can go back to those 140 some votes and take the counterpoint on whether the vacancy or their voting out of a building, I would like to specifically look at those 143 votes, not general information. So that's my opinion.

Spitler: Mr. Price.

Price: Well, my broader interest -- I would like to hear all of those, but I was going through -- I would particularly like to know the dates and the situation on moving. And I have to tell you that in my life I had my house taken by eminent domain. And I moved and rented a place, and ended up having to vote from the old address. In fact, it was the first time -- the attorney for the city that took my house eventually became a legislator and was one of my

colleagues. But I have been curious about that particular thing, and haven't asked anybody since it was being discussed, because it had seemed odd to me a long time ago when I did learn, by hearsay, that the places that Bob Stupac took were, in fact, the homes where a lot of these numbers are at. And I really would like to know the date on that. Because, bear in mind -- and I've lived through this myself once -- these people are living in their home and through legal means, apparently, at least hearsay, at some point in time they were forced to move, and the -- if I'm understanding right -- and I want to -- and I'm still not a hundred percent sure, but if I've heard right today, some of those people who were forced to move so that they could board up their houses or tear them down, or whatever they were doing with them, are being challenged, or as -- as improper voters and I would like to know the dates and times, at least on that one part. And I have to tell you my curiosity -- I would like to hear the rest of it, but -- that's one part I would like to hear.

Spitler: If it pleases the committee, I think what we should do is listen to the closing. If within the closing we find that there are further questions that we would like to ask Mrs. Ferguson, then we certainly can call Mrs. Ferguson for clarification of those issues. Is that going to be all right with the committee? [General agreement] Okay. Please proceed.

England: We have no further evidence to present to the committee. Is it the committee -- I'm not sure I understand the rules. Are we to do our closing and then the Contestant does a closing and a rebuttal?

Spitler: No. We're going -- if you've completed your --

England: I'm done with evidentiary.

Spitler: Okay. At this point in time, Mrs. Von Tobel will have an opportunity for rebuttal, and that rebuttal limited to issues previously raised. And then you, also, will have that opportunity. At that time we'll have the closing summary from Ms. Von Tobel and then your closing summary. We'll move from there to any -- I believe everyone has -- well no, there's one other person who's indicated that they wanted to speak to the committee. We would hear any public comments, and then we would close this portion of the hearing and go immediately into a work session.

England: Okay.

Spitler: That would be the format that we would follow.

England: I'm not sure, and perhaps I can ask for some clarification from Assemblywoman Tiffany -- I am perfectly prepared to either do it in this evidentiary portion or in my closing statement, to go through every number step-by-step, and tell you what the numbers are, based on the 142 that we started out with early this morning and where, from the evidence we believe has been presented, both by Ms. Von Tobel and by us, what number we're down to now. If you would like me to do that in the evidentiary portion of our presentation, I'll be happy to do so.

Spitler: It's your call, but if you've completed here, that certainly is appropriate for your summary.

England: That's fine, then I'll do it then.

Spitler: Okay. Then we'll enter the rebuttal phase and Ms. Von Tobel, and please remember to limit any rebuttal to issues previously raised.

[Mr. Foley coming forward]

Foley: I don't have extra copies of this. I will read it into the record and then give it to the secretary, if that's all right. What this is is in rebuttal to one point of Kathryn Ferguson's testimony. She had stated that the reason she didn't have her deposition, or wouldn't sit for a deposition, was that when she heard that I had requested it, she inquired of the District Attorney, who told her that, well, Chris Giunchigliani's attorney would not be present, therefore, she recommended that I not sit for it, as to only give a deposition to one side, but instead come up here.

What I have is a letter from Kathy England to Mary-Anne Miller of the District Attorney's Office (Exhibit M), setting forth that, as follows: Dear Ms. Miller: As we have discussed, my firm has been retained to represent the interests of Ms. Giunchigliani in the election challenge indicated above. I have spoken with Attorney Daniel Foley who represents Ms. Von Tobel and we both agree that it would be useful for us to cooperatively develop a plan for proceeding with limited discovery and the collection of evidence

so that a comprehensive and concise presentation may be made by all sides in the opening hours of the 1995 Legislature. We expect that the challenge will be handled on the first day, January 16, 1995. To that end, and with the time constraints being as they are, we would like to depose Registrar of Voters Kathryn Ferguson concerning the conduct of the election and events in Assembly District 9. With my concurrence, Mr. Foley made inquiry of Legislative Counsel Malkiewich as to whether [sic] determine a subpoena may be issued to compel this process and there does not seem to be a clear-cut means to do so. Therefore, Mr. Foley and I agreed that we would make the request of you to allow us to depose Ms. Ferguson next Wednesday afternoon at a location convenient to you and Ms. Ferguson." There's another paragraph that doesn't really pertain to what I'm talking about, and the fact of the matter is, is that what she'd stated before just simply isn't true. And I submit -- I completely lost track of the numbers -- as exhibit. [Took letter to the secretary.]

Spitler: They'll check there, to record the proper number.

Foley: That's all I have for rebuttal evidence.

Spitler: Okay, thank you. Ms. England.

England: I guess, since we're now entering my letters as evidence in this proceeding, I would like to clarify it. When I wrote that letter I had already spoken to Ms. Ferguson and to Ms. Miller, and at that time they told me they had already refused to do a deposition when Mr. Foley asked them to do it. So my recollection and Ms. Ferguson's contemporary corroboration of that is that they had already refused. But at that point in time, now that Ms. Giunchigliani was represented by counsel, which was me, I was attempting to convince the District Attorney's Office, that it would be very wise to allow us to do it so we could sort out the matter and then make a proper presentation to you, and not have to have a Registrar of Voters sit here for three days, and to muck up your records with extraneous information that you might not need.

So my recollection is, and both Mary Miller, the Deputy D.A., and Ms. Ferguson, told me that they had already once refused. And I would try to talk them out of that refusal. Unfortunately, I was not persuasive enough to do that, so we had to present it this

way. That is the only rebuttal we have, and we're prepared to make closing after the Contestant's closing.

Spitler: Thank you. At this time we'll enter the closing summary of the case. Mr. Foley.

(1543)

Foley: I am going to be very brief. We've, I think, hammered away through opening statements to what was much of our case about our numbers and our various points. We're all intelligent people here, and don't need to repeat it for the third or fourth time. I do want to thank the committee for the attention that you've paid to this matter. I appreciate where you are at the beginning of your six -- hopefully not a seven-month journey -- and your desire to get on with it, knowing that this is not the kind of a way that you like to start a legislative session.

I hope we didn't get off on a bad foot on the discussion of courtroom versus Assembly. If I said anything that offended anybody, I am sorry for that, but I think we got it straightened out in short order.

As Kathy Von Tobel stated during her testimony, she started her investigation, ran across a number of things. One of the early things she ran across was Jose Cortez Solano, and as she said, she was sickened by it. That -- a person like this who has limited language knowledge -- limited English -- limited in the English language -- who is a kitchen worker at a hotel, can be forced by the Culinary Union to commit a felony, for fear of offending somebody.

Noticeably absent from the opposition's case was any mention of Ted Pappageorge, Judith DeZarn or Chris Walker. And what they did with respect to the three individuals that they registered -- not a word. Chris says she's met Ted Pappageorge on two occasions. As I told you before, I met with Mr. Pappageorge and discussed with the Culinary counsel the issue that I wanted to get into. And there's been plenty of notice on that. If nobody shows up, nobody talks about it. It's a felony. They put these three individuals in a position of committing felonies, and if that's the case, they conspired and committed felonies themselves. This is the Culinary Union that the representative stood here today and

said, yes, we actively were involved in this campaign with Chris Giunchigliani.

The other felony. Chris, herself -- I take that back. Violation of the statute. Felony, as I've said before, is for another tribunal. I said that from the beginning. I don't intend to have this committee make a decision on whether there's been a felony or not. Chris, however, just swore under oath and testified she violated the statute. No question about it. She didn't say she committed a felony, because that's subsection 13, which states that you have to willfully violate subsection 10. But she said she violated subsection 10, an election law.

If this does not shake this committee, if this does not concern the entire legislature that one of your own is violating laws that were specifically enacted to prevent fraud against the voters and citizens of Nevada, I don't know what could. This was a very serious bill, S.B. 250. It's not a clerical matter. It is the only chance of any accountability that is had with these mail-in registrations.

Fortunately, and I think I know why, she wasn't cross-examined by the committee as to what happened with that. And -- what I said -- why -- it's because -- from, I think, everybody's standpoint, it doesn't have to do with getting rid of a vote, and that's what you all are looking at here. But even on her own, she doesn't give any explanation for how she misses that box number 12 on the form. No, there was an explanation -- or I think I heard it. That was Gertrude's problem. That's -- that's -- that's Gertrude's problem. She should have taken that and put Chris's information in there and then found Chris and got her to sign the thing. It's nonsense.

There will never be an indictment, there will never be a conviction under that statute that you enacted last session, if there's not one in this case. How can citizens of the State of Nevada, lay people who are out there violating that statute, be held accountable when legislators who know full well not -- can not only just seeing the form, but know full well the law, don't follow it, and aren't held accountable.

It was with those kinds of revelations that Kathy Von Tobel ran across that fueled the fire in her belly to pursue this investigation in this contest. And as Assemblywoman Tiffany pointed out, it should have taken an army and unbelievably, it took Kathy and Mike Epling. And the two of them did it, seven, eight hours a day canvassing the district and finding all of these violations. Completely hamstrung by the inability, then, to have subpoenas issued and take depositions. Talk to Mr. Pappageorge, talk to whoever it was at the Culinary Union who he dealt with and was trained by in registering voters. What he was told about -- what he knew about the lack of citizenship of the own member -- of his own members at that hotel.

And that was a hamstring on the rest of the investigation. Kathy can go walk and make the effort and talk to people out in the district, and it's one thing, they're happy to talk, but I might have to literally drag someone down to my office to get a deposition without a subpoena. People only have so much time and they're only willing to do so much. And, only willing -- how willing they are to get involved. They're just not.

And that's something I know that this panel did not create, is this problem. And that's something that I hope will be discussed at length in the upcoming session.

(1826)

Kathryn Ferguson admitted that the Election Board was guilty of malfeasance in the way it handles felons. She deflected some of the blame from herself to her predecessors, saying that where she came from in Texas, and where other people in her office came from, this was automatically done through the court system, and communicated to the Elections Department. And she figured that's the way it happened. And now they've recognized it and now they're doing something about it.

The fact is, is whoever hasn't been doing something about it for these many years, especially when all these other jurisdictions were doing something about it, constitutes malfeasance. They have a duty under the statutes to have clean registrations, to update them, they're given the authority under section 530 of 293 to carte blanche to do anything it takes to clean up the registration roles, including house-to-house canvassing. That's their duty.

When they don't do their duty, that's malfeasance. And that stands for the 42 votes that we've submitted under the conclusive sections. That stands for the two votes -- excuse me, we had the other two votes with respect to the illegal -- the alien, non-citizens who voted.

With respect to the what's now referred to as the bus trip, this is a particularly discouraging issue, to be hearing this at this time. I'm not convinced of these numbers. Kathy Von Tobel testified that she was specifically told by the Election Department that there had been 66 Culinary workers who voted that day, and had been told of the circumstances under what occurred at the polling place that day. Not being able to take a deposition, completely eliminates my ability to -- and I can't cross-examine Kathryn Ferguson in this forum -- we weren't able to find anything out in advance. Again, from what Kathy Von Tobel testified to, though, and she has -- and she has absolutely no reason to lie about something like this -- she got the handwritten information from the Election Department, she swore under oath here today that that is exactly what Kathryn Ferguson told her. Kathryn Ferguson, on the other hand, has a reputation at stake. Has a job at stake. Cannot come in and admit to malfeasance, and that's just up to the committee, I believe, to determine who you believe and what you believe.

In closing, again, it is under 293.410(2) that this contest has been made on the ground (a), among others, that the Election Board, or any member thereof was guilty of malfeasance. There's no requirement of showing any particular number of votes. We've showed a number of votes that were counted due to malfeasance, that shouldn't have been counted, that exceeded the difference in the election. We've pointed out five different instances of felonious conduct, but specifically, two of which specifically involve Chris Giunchigliani. Now on that basis, I submit to you that the burden of proof has been met, that this committee, I grant to you, has an extremely difficult job ahead of it, and I would respectfully request that the result of the evidence presented today that Kathy Von Tobel be seated in the position of Assembly -- in the Assembly -- the Assembly for District 9. Thank you.

Spitler: Thank you. Mr. Anderson.

Anderson: Can I ask, Mr. Foley, and I know that this is probably a -- Mr. Chairman, I don't want to take too much time with the committee --

Spitler: And I want to emphasize to you that I don't want you to take a whole lot of time. And I want to also emphasize to you that these are closing remarks. Should you open an area not discussed, other issues, and certainly other parties, can respond. So --

Anderson: I guess it's my concern that in his closing arguments there were some issues that were not brought up that I -- Okay, I'll forego. Thank you.

Spitler: Thank you.

Foley: Anything I didn't address, it's not that I'm abandoning in any way. I think it's been -- as I stated at the beginning of my summary, it's all been presented and I leave it with you at that.

Spitler: Thank you. Ms. England.

England: Well perhaps I can address some of those issues. I am, as you know, a novice in proceedings before you and my normal realm is in a courtroom. I am used to, when my opposing counsel, no matter how able, as Mr. Foley is, makes a comment in closing remarks that has -- is not supported by any evidence introduced, I am used to making an objection. However, based on your rules, I have refrained from making any objections.

But now I must ask this body to reopen the evidence, because Mr. Foley has gone in argument and presented information that was beyond that which he provided. There was no evidence here about -- there was no first-hand evidence of any kind about the activity of Mr. Pappageorge, Ms. DeZarn and Mr. Walker. I do have their affidavits and it was hearsay upon hearsay upon hearsay. I understand that you are entitled to accept hearsay evidence, and the definition of hearsay is an out-of-court declaration offered to prove the truth of the matter asserted. And the danger of hearsay is that this declarant is not before you, and you can't question them. But you accept that.

But the hearsay that you've heard is hearsay upon hearsay upon hearsay. There is no reliability. And if it were a matter that was tangential, if this did not impugn the reputation -- we are accusing people of crimes. We're not even accusing them of conduct which might constitute a crime. We're not calling up Stewart Bell, our new District Attorney. Rather we're accusing them here. And I think that that needs to be answered, and I would ask this body to allow me to reopen the evidence to present three affidavits, one from Ms. DeZarn (Exhibit N), one from Ted Pappageorge (Exhibit O) and one from Chris Walker (Exhibit P), the three that were referred to by Mr. Foley in his opening statement.

Spitler: We will accept those as evidence.

England: Thank you. They would be -- and you all know how bad I am at keeping track of my own exhibits.

Spitler: Ms. Erdoes is real good at keeping the numbers and the letters straight.

England: Thank you.

Spitler: If you would just supply those to her, and then proceed with your summary -- your closing.

(2142)

England: Thank you. The next thing I would like to do is move to reopen to allow Ms. Ferguson to answer the very serious charge of malfeasance and misconduct which have been raised in her -- in Mr. Foley's final argument.

Spitler: At the conclusion of your closing remarks, the panel may or may not choose to ask her to come forward again.

England: Members of the committee, it has been quite some time, since I've been in law school, and since I left the City Attorney's Office, as well, many years ago, I have not practiced criminal law. But I did learn, as I'm sure Mr. Foley learned, that once you become a lawyer, you do not lightly accuse people of crimes because you are mindful that only a jury or a judge sits in judgement and convicts people of crimes. And as I said in my opening statement, I believe irresponsible accusations have been made here, about

people committing crimes, particularly felonies, which are serious crimes.

Most importantly, we are now accusing my client of conspiring with Culinary Union members to commit even more crimes. We have also accused my client of committing fraud. Now, these matters were never ever, ever raised in the contest which was filed by Ms. Von Tobel. And as I told you at the beginning of these proceedings, I thought that we should be constrained by the substantive content of that petition. And I also thought that the evidence should be limited to that. But instead, we have started out with a matter completely extraneous to this issue.

And so I think it's important that I address it only in passing. The definition of fraud -- the conventional lay-person's definition, not the one at law, but the one in law does track it -- is that it is deceit or deliberate deception. Ms. Giunchigliani has told you exactly the circumstances of the filling out of voter registration forms. We have pointed out to you here today the confusion that might arise. Others have engaged in activities which, if you took the logic that Mr. Foley is using about what is assist, nearly everyone who has ever handed anyone a mail-in voter registration could be liable and indicted for a felony. And I would suggest to you that the truest words that Mr. Foley spoke, that no one will ever be indicted for that conduct, are, in fact, the truth. Because that's not what the law intended. The Assistant Secretary of State told you that what they did was -- that was to prevent people from altering voter registrations afterwards.

So I think that that issue really is a red herring. I'd rather talk about whether there has -- something has happened which would change the number of votes cast in this election. And we are all constrained by the difficulty, 'cause we can't -- no matter how unqualified the voter may be, we still don't know who they voted for, except, apparently, the one Vietnamese woman, who despite his admission that he doesn't speak Vietnamese, managed to convey all sorts of information, including who she voted for, to Mr. Foley.

Nevertheless, I think it's important for us to look through those numbers, and as we were going through we kept a tally sheet of how you arrived at the 142. One they counted was Mr. Cortez

Solano. It's been conceded that he did not vote. One was Ms. Hunnh, the Vietnamese woman. There has been no real evidence introduced about her. They've not introduced any evidence that shows that she did vote. Therefore, they have failed in their burden to provide you with unequivocal evidence that in fact, she did something wrong. They have provided you with her voter registration, and have somehow linked that up. They've not provided you with an official, authentic record, certified by any government agency such as Mrs. Ferguson, who can certify, as custodian of the record, what record she has.

And as for Mr. Kanaan, we apparently have his voter registration but we still have no evidence that he is of some manner, disqualified from voting. So of those three that they've raised, we would concede, at best, one, Mrs. Hunnh if, in fact, you're going to accept some handwritten sheet, unauthenticated with no foundation. I'm not suggesting that people here made up documents, but this body ought to be careful when we're accusing people of doing something and we're taking votes away from somebody, that in fact, we have -- that you have real evidence upon which you can do that.

Similarly, it seems ridiculous to believe that Mrs. Hunnh, if in fact she did vote, based on the testimony of Mr. Foley, who does not speak Vietnamese, Mrs. Hunnh said she wanted to be a Republican. Mr. Foley has told you that she somehow managed to convey to him, even though she does not speak English, that she wanted to register as a Republican and Mr. Pappageorge wouldn't let her register as a Republican, yet he would have you believe that we take a vote away from the Democratic winner and not the Republican. If you're gonna do anything with that vote, if in fact she did vote, take it out of the Republican side. Take it from Ms. Von Tobel. So that makes her burden one more. If you want to use the map that she suggested you ought, the 66 Culinary -- alleged Culinary -- votes by the bused people -- you have heard the testimony that those 66 votes are -- the 66 votes were cast in all of District 9 that day. Not necessarily by the Culinary people.

But more importantly, there is not shred of evidence that's been introduced to you here, that anything was wrong with any of those votes. And as Ms. Giunchigliani -- it is not right to disenfranchise those people. You are not only disenfranchising

the 60 -- or the bused people from the Culinary Union, but you would be disenfranchising every voter who voted in Assembly 9 that day. And what evidence do you have to do that? You don't even have it separated out who was a bused person and who wasn't. And so you would be taking those votes away on the flimsiest of evidence, which is now, what evidence do you have?

And I want you to examine the quality of the evidence. Ms. Von Tobel has told you that Ms. Ferguson told her thus and so. I'm not here to suggest that Ms. Von Tobel is not telling you the truth, but as a lawyer who has tried many cases, and interviewed many witnesses, and in my own experience, we all selectively perceive events and out of that selective perception we selectively remember things. So perhaps she just doesn't remember what Ms. Von -- what Ms. Ferguson told her. Perhaps she is telling you the truth when she tells you that's what she remembers. But that's not what Ms. Ferguson remembers. And her memory -- Ms. Von Tobel's memory -- does not comport with the facts. Because how -- you would then have to assume that no one else ever voted on that particular day. And there is no evidence upon which you could make that conclusion. So I think you get to throw the 66 bused people and the others out. Those who drove themselves, or were driven to the polling place on that day.

Then we turn to the 25 to 29 felons. Now, Ms. Ferguson came here today and told you about the process, the laborious process she is going through, to purge the voter roles of felons who are not permitted to vote. But as she explained to you, it's still an ongoing process. She now says there -- of the 29 -- she's knocked it down from 40 to 29. That's a pretty big percentage to knock it down. It's nearly a 25 percent rate. And now she says there's another five that are still in question. I would suggest to you that if you were going to err on the side of logic, that number is going to be knocked down even more once she gets the information back. As she's explained to you, there are people who are residing who may be listed as felons, who have had their civil rights restored, and who, in fact, while having been convicted of a felony, are now permitted to vote because the state in which they were convicted has restored their civil rights. She told you the process to verify that, means that Metro has to go verify that in fact that state has restored, or, for example if something was commuted or somebody was pardoned. So that 25 is going to go

down. But even more troublesome about the 25 part is, as has been suggested here, how do we know who they voted for? And I think it's unfair to assume that they voted for one candidate or the other. But even if you leave the 25 felons in the column, you're still not -- once you knock the 66 out -- of the people who voted on November 2nd which simply happened to be the same day as the bus people, then we have 42 bad registrations left.

Now, I commend Ms. Von Tobel, and I am very, very impressed with the tenacity with which she has offered the information to you, and what she has done to walk her district and to uncover these irregularities. But I would suggest to you that the evidence that you have been provided would never ever, ever be accepted in a court of law. And I'm not saying that you have to adopt those same evidentiary rules, but you ought to adopt the same sense of what is fair and what is right, and whether there is indicia of reliability. And one way you test the reliability of evidence is you tell the other side what the evidence is and then you let the other side go out and see if they can prove it wrong.

We were never permitted that opportunity. Had you given me that book last week, I would have come in here with affidavits to either prove or disprove whether these people voted, whether they moved -- to the extent I possibly could. And I would have done it by some way that would satisfy you that I'm just not in here telling you what I vaguely remember when I talked to an apartment manager on a street I've never walked down before.

There is no proof, no real proof. And we're -- you're being asked to unseat a duly elected person based on unsubstantiated information being provided to you. I appreciate it's a difficult task, but I can tell you that I began working to collect the evidence to present to you last Wednesday, and since last Wednesday, working through till when my plane left at 2:30 on Sunday afternoon, with, I might add, a very competent staff, I was able to collect 11 affidavits that I presented to you in our package here today, and five more which we chose not to use. In that same period of time the Culinary Union provided to me 17 affidavits by every single one of their business agents who engaged in the registration process. So together we were able to collect that many affidavits in four days. I'm getting lost in my math, but that's about 28 affidavits in four days. Ms. Von Tobel had nearly

60 days to collect these affidavits, and she has not submitted it to you. And I would suggest because it wasn't -- it's not there. And her burden was to provide you with information that if you could get up to 124 or even close to it, I would suggest, perhaps your margin of error's about 10, then maybe you ought to start thinking about it, and ask for more evidence.

But the proof that she's given you is not right. Now we can go through those numbers page by page, but we have already provided to you, and we've already provided you evidence about the issues of the addresses which were taken by eminent domain. That knocked out in the two precincts, 092 and 31, I believe eight of those people. So her 42, at best, is knocked down by 8. Excuse me, ten? Knocked down by ten.

We then -- and I was not quite keeping track of exactly -- and I -- because I saw this for the first time today -- I do know, because my business is in this district. My business is at 704 South 9th Street. My side of the street is zoned business. The houses across the street from me are still zoned residential, except for the three at the end of the block. So it's virtually impossible, on a day-to-day basis, to figure out who's business and who's residential in my neighborhood, because it is, and I am in this neighborhood as a business. I am -- because it's ever changing, and if you go to City Council meetings from time to time, you will figure out where it is.

But that homeless center for the Vietnam vets is two blocks away from me, and I drive by it every morning. Now listed amongst the 42, I counted at least four homeless vets, and we have now been provided with the District Attorney's opinion that homeless people are permitted to register. I don't know how many other of the people in that 42, other than the homeless vets who use the Vietnam Veterans' Center as their address, but at least four should be knocked down -- off the 42. I do not know the street addresses of each and every homeless shelter in the city. If I had known this would be an issue I would have come here today with that information, and I'm sure I would be able to perhaps knock down the 42 even more. But on a best case basis, it seems to me that we have at least 14 that can be knocked off that 42.

And any other information that's been provided to you -- well I'm sure that Ms. Von Tobel, who has never done this before, nor have I, made her best efforts to find -- when she went to apartment complexes and asked managers, you know, are people living here, made a best effort, and I have no doubt but that the information that she provided you is that which was given to her. But this is not necessarily enough, because people are not home during the day. As others have pointed out, it's an unusual district. People live above their garages, people live in small houses behind larger houses in this area, and the fact that no one was home when you came to what appears to be a residence, and sometimes I can tell you, for instance, my office certainly looks like a residence, and there would be nothing to tell you it was a business, other than from time to time the sign which stands in our front yard. But we also own the house next door and there's no sign in that front yard. You would think, if you were walking my neighborhood, because residences are across the street, that our actual business house is a residence.

So, it is a transition neighborhood, and it's not necessarily indicative that just because you went there and thought it was a residence, that it was and if somebody was not home, then they must have moved or they're not there any more or it's now a business. During this election season the fact that somebody's not home and you walked the district and they were never there certainly is not indicative that they don't live at the house any more. I managed, due to my work schedule, to never meet a candidate at my home, but every time I came home about 11:30 at night there were at least 15 door hangers on my door. So -- I read each and every one of them very carefully. [Laughter] I take that back. I did -- somebody did leave Skittles attached to there, so I did eat the Skittles.

I would suggest to you that the proof that you've been provided, without me standing here and impugning the good intentions of Ms. Von Tobel and the hard work that she's undergone, is simply not enough. If you knock out the 66 bus and other people, if you knock out Mr. Cortez Solano who we know didn't vote, if you knock out Mr. Kanaan who we're not really sure why he can't vote, and if you knock out at least -- let's say -- let's assume, I think generously, that half the felons would have voted for the Republican and half the felons would have voted for a Democrat,

you can knock out half the felons, and we Democrats will take the extra felon. So you knock off -- she gets 12 and we get 13, all right? And you knock off at least 14 bad registrations, we are way, way, way below the number that's necessary for it to even raise the issue of a probability that there might be a different outcome to this election.

I did -- there was a question earlier, and I did do the tabulations on the -- I think -- Mr. Spitler, you asked for the tabulations on the 42 and how they stacked up, because there had some suggestions about whether the map would show it was going one way or the other, and I did do those tabulations during the lunch period. And I did them both for the conclusive and the inconclusive. In the conclusive, in their package of materials in the black binder, for all of those precincts they came up with -- for people who voted, for which they believe they've provided conclusive proof they shouldn't -- there were 22 Democrats, 11 Republicans and 9 No Party. So that meant, let's assume all the No Partys, for example, vote then Republican, you've got about an even split -- it's half and half. But nonetheless, you still have at least 11 Republicans.

Now in the inconclusives I did the analysis as well, on a party by party, and of that you came up with 4 Republicans, 8 Democrats and 4 No Partys, and then there were 6 people in the very last precinct, I think it was 002, for which there was no designation. The information that they provided you did not have a party specification at all, and there were 6 of them. So I'm not sure who gets them, the Democrats, the Republicans or the Libertarians -- I'm not sure.

But in any event, it's our position that the numbers simply cannot -- even giving them the best spin -- cannot add up to the 124 necessary to change the outcome of the election. And there is one more that they get to throw into their pot, which ups -- ratchets up their burden one more, which is Mr. Dante Duce. As Ms. Giunchigliani has told you [to Ms. Giunchigliani] -- did I get that right? -- Mr. Duce was Ms. Von Tobel's Republican opponent in the primary. He registered at a vacant -- he has a vacant lot -- vacant lot. He was reported to the District Attorney's Office which is what you're supposed to do. Charges are currently pending against him. Yet he, even with those charges pending, availed himself of voting in the general election. So assuming,

since he was a good Republican candidate, he probably voted for the Republican candidate, as well, in the general, we can probably take his one charge -- or that vote -- and that increases it by one.

I won't belabor these points any further. I will be happy to provide any additional information this committee thinks is necessary for its deliberations, and I thank you for your patience.

Spitler: Thank you. At this time we come to the point of our meeting to include public testimony. Most of the people who have spoken have spoken throughout the time. I do show on the sign-in list -- is there an Ed Fend from AARP who wishes to address the committee? Any representative from AARP? Ed Fend. F-E-N-D.

Bob, would you check. Is there -- any other signatures on that list? Did anyone fail to sign the sign-in list who wish to address the committee? If not, we'll close the hearing and open the work session. Mr. Price.

(3041)

Price: Does that indicate, then, that we are not going to recall Mrs. Ferguson. Let me for the record. That we're not going to allow Mrs. Ferguson to answer these questions.

Spitler: Did the committee wish -- based on the closing things that were stated, is there anyone else in the audience who needs to be called forward to answer any points of clarification for any committee member?

Price: I will be happy with the call of the Chairman.

[No other response]

Spitler: Okay. The hearing is closed and we open the work session at this time -- discussion among the committee members. Mr. Anderson.

(3075)

Anderson: Well, I was concerned in the closing argument to hear some statements, and I want to make sure I get these in the record because of my concerns.

It seems to me that Ms. Von Tobel had the first boat in the water and that she had the longest period of time to do the investigation here, and I was concerned that they didn't feel that discovery was of sufficient duration, when in reality they had the greatest opportunity.

The second concern was that of the castigations against the Election Department. Although I'm not a candidate or familiar specifically with the operation of the Clark County system, I am very familiar with the one in Washoe County and I know what great, absolute pride, voter registrars take in their work and the work of their office. And I was deeply concerned by the allegations that were made, and I really didn't feel that they were supported in any way by the previous testimony that had been given. That I found, if anything, that exemplary action in that department. And I wanted to clearly be in that -- make that statement clear for the record. And I was concerned about that in Mr. Foley's closing, because I didn't think that anything in his testimony indicated that fraud. And I personally find no fraud here.

Spitler: And again, I would bring us back to point to make sure that it's once again very clear in everyone's mind, the task before us. And it comes specifically from the Procedure for Election Contests of 1995 which was adopted on opening day of session. And at section 3 we need to report to the Assembly our findings, whether the Contestant has met the burden of proving that any irregularities shown were of such a nature as to establish that the result of the election was changed thereby.

So if we want to sort of keep our discussion on that -- Mr. Close?

Close: Thank you Mr. Chairman. First of all, from my perspective, I have a high regard and respect for both Mrs. Von Tobel and Ms. Giunchigliani, and appreciate all who have been here today to testify before this committee.

From my perspective I think we have seen presented to us today, there's a question of people voting in districts which they don't reside. However, I don't think that is Chris's responsibility, as a candidate. I feel this is a Clark County Election Department problem.

I further heard the problem of felons voting in the election. Again, I do not feel like this is a candidate responsibility to investigate this. I feel this is also a Clark County Election problem.

Chris has been -- Ms. Giunchigliani has been accused of a violation of 293.5235, paragraph 10, but at this point I have not seen a conviction of that process, and that we have heard from the Deputy Secretary of State that there was confusion regarding item 12. I feel, therefore, that this has to be further investigated from other areas besides this body.

And in spite of the long arduous process performed by Mrs. Von Tobel, I do not feel there's been sufficient number of challenged votes to overturn the election, and I think, in particular, we do not know who those individuals voted for. We've received complaints of polling place irregularities, however, I do not feel they have been fully substantiated, and that they have affected the voting tally.

And so I also agree that there has not been any fraud or anything here that would indicate that this election should be overturned. Thank you.

Spitler: Other comments from the committee? Mr. Price?

(3260)

Price: Thank you, Mr. Chairman. I couldn't pass without one last word. What has been going on here today, and as a matter of fact yesterday -- and it just occurred to me is historic in several ways. And kind of going back to some of the summary about sometimes everything isn't whatever it seems to be or whatever -- from mine -- if I may -- the historic thing that's been going on yesterday and today is that I have served for nine or ten years with the distinguished Co-Chairman, Mrs. Lambert, and to my knowledge, and I think I'm right, these proceedings are the very first committee proceedings that she has ever presided over as a chairman, and I want to tell you, I think you did a wonderful, wonderful job, for the record.

Lambert: Oh. Thank you.

[Applause]

Spitler: Both chairs have agreed at this point that it is appropriate for a motion, and I would indicate to the committee that the motion should indicate our recommendation as to who should be declared seated and elected. Is there a motion? Ms. Buckley.

Buckley: I move that -- I believe we have -- thank you, Mr. Chair. I believe we have to first state our finding. I move that we find that the Contestant has not met their burden of proof in showing irregularity such that the result of the election would have been changed; and that we move that Ms. Giunchigliani be declared the elected winner of Assembly District 9.

Spitler: Is there a second?

Close: Second.

Spitler: Seconded by Mr. Close. Discussion on the motion. [No discussion forthcoming] Would the secretary please call the roll.

Secretary: Mr. Anderson?

Anderson: Yes.

Secretary: Mrs. Buckley?

Buckley: Yes.

Secretary: Mr. Close?

Close: Yes.

Secretary: Mr. Hettrick?

Hettrick: Yes.

Secretary: Mr. Perkins?

Perkins: Yes.

Secretary: Mr. Price?

Price: Yes.

Secretary: Mr. Sandoval?

Sandoval: Yes.

Secretary: Ms. Tiffany?

Tiffany: Yes.

Secretary: Mrs. Lambert?

Lambert: Yes.

Secretary: Mr. Spitler?
(3317)

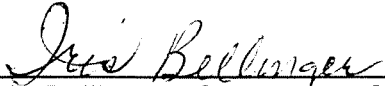
Spitler: Yes. The motion is unanimous. That concludes our work for today. I want to thank the committee members for your hard work. I know it's been a hard day. I want to thank both parties for coming before us today. I think that it is tests like this that tell us where irregularities have to be corrected, and what we need to do to make things better.

Is there any further business to come before the committee? [No response] We're adjourned.

With no further business to come before the committee, the meeting was adjourned at 8:37 p.m.


(ADDENDUM TO THE RECORD: Exhibit Q is an affidavit submitted by Daniel T. Foley, attorney for Ms. Kathy Von Tobel, in response to a telephone inquiry concerning the binders removed from the hearing room upon conclusion of the committee's deliberation. Exhibit R is the original letter and backup material from the Secretary of State's Office notifying the Governor of the two election contests which had been filed. Exhibit S is the Report of the Select Committee on Credentials for Assemblywoman Chris Giunchigliani.)

RESPECTFULLY SUBMITTED:

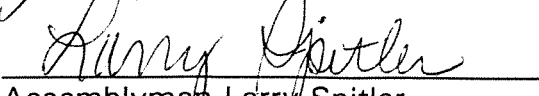


Iris Bellinger, Committee Secretary

APPROVED:



Assemblywoman Jean Lambert



Assemblyman Larry Spitler